Report of the

Nova Scotia Select Committee On Petroleum Product Pricing

August 31, 2004

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Mr. Roderick MacArthur
Chief Clerk of the House
House of Assembly
Province House
Halifax, Nova Scotia

Tuesday, August 31, 2004

Dear Mr. MacArthur,

In accordance with Resolution 1676, passed by the House of Assembly on May 13, 2004, the Select Committee on Petroleum Product Pricing is pleased to submit this report for the favourable consideration of the Legislative Assembly of Nova Scotia.

Respectfully Submitted,

William Dooks, MLA
(Eastern Shore)
Chairman
Select Committee on Petroleum Product Pricing

Halifax, Nova Scotia
August 2004

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- J. Aversa, "Food and gasoline fuel U.S. inflation increase" Globe & Mail, ROB, June 16, 2004;
- D. Smith, "Over the barrel" Sunday Times (UK) May 23, 2004]
- P. Brethour, D. Ebner, "The crude oil roller-coaster ride continues," The Globe and Mail, Monday, August 6, 2004, B8
- A. Seager, "Oil threat to world economy," The Guardian, Thursday, August 5, 2004;
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Submitted by Service Nova Scotia and Municipal Relations

MESSAGE FROM THE CHAIR

On May 13, 2004, members of the House of Legislative Assembly of Nova Scotia unanimously agreed to establish an all-party committee that would investigate Nova Scotians' concerns regarding the pricing of petroleum products like gasoline and home heating fuel.

The task set before the Select Committee on Petroleum Product Pricing was not an easy one. The committee was to seek input from consumers, producers, suppliers and operators before making recommendations that would help ensure reasonable prices for these products. All research and deliberation was to be complete, and a report tabled with the clerk of the House of Assembly, by August 31, 2004.

As chairperson it is my privilege to note that members of the committee fully embraced the challenge, often setting aside their constituency work, personal and professional obligations as well as the lure of Nova Scotia's few days of summer, to complete the long hours of travel, research and debate needed to complete the job. The committee displayed a true spirit of co-operation — researching and debating the issues and consequences in a mature and informed manner. It took tremendous effort by committee members and support staff to complete this report within the compressed time frame required. I thank all involved for their dedication.

I also thank the Nova Scotians who took time from their busy schedules to appear at public hearings or to prepare written submissions for the committee's consideration. Thanks to these concerned citizens, the select committee has prepared a report and recommendations that it hopes will inform debate in the House of Assembly while encouraging ongoing debate and changes that will best protect the needs of all.

Bill Dooks
Chair, Select Committee on Petroleum Product Pricing
August 31, 2004

COMMITTEE

Members of the Nova Scotia's Legislature's Select Committee on Petroleum Product Pricing

Mr. Bill Dooks, MLA (Chair)	Eastern Shore
Mr. Jim DeWolfe, MLA	Pictou East
Mr. Brooke Taylor, MLA	Colchester-Musquodoboit Valley
Mr. Frank Corbett, MLA	Cape Breton Centre
Mr. Charlie Parker, MLA	Pictou West
Mr. Howard Epstein, MLA	Halifax Chebucto
Mr. Russell MacKinnon, MLA	Cape Breton West
Mr. Danny Graham, MLA	Halifax Citadel
Mr. Gerald Sampson, MLA	Victoria – The Lakes

Alternates:

Mr. Ron Chisholm, MLA	Guysborough – Sheet Harbour
Mr. Gary Hines, MLA	Waverley-Fall River-Beaver Bank
Mr. Stephen McNeil, MLA	Annapolis
Ms. Michele Raymond, MLA	Halifax Atlantic
Mr. Keith Colwell, MLA	Preston

BACKGROUND

Many people consider petroleum products, and especially home heating and motor vehicle fuel, to be commodities around which our society has been built. Indeed, Nova Scotians use about 1.2 billion litres of gasoline and almost 900,000 litres of home heating fuel per year. There was, therefore, understandable "sticker shock" and major concern when gasoline prices neared and then hit the $1 per litre mark earlier this year. Not only were prices inexplicably high, but they varied a great deal from community to community across the province, with little apparent reason for the inequity.

All Nova Scotians were concerned by the strain on family and household budgets. Those on fixed incomes felt particularly vulnerable and everyone was worried by alarming predictions that the increasing prices would continue in the future.

Although Nova Scotia used to have a regulated marketplace for gasoline, this was changed to a deregulated system in 1991 because of perceived – and promised – lower prices for consumers.

In recent years, a number of legislative proposals had been made to deal with concerns over gasoline pricing. In the spring of 2004, Bill No. 79 - Petroleum Products Pricing Act proposed giving government the authority to give consumers notice of impending fuel price increases and to implement stronger measures to control and stabilize prices.

On May 13, 2004, by Resolution No. 1676, members of the House of Assembly unanimously agreed to create an all-party committee, the Select Committee on Petroleum Product Pricing. Bill 79 was stood by the Committee on Law Amendments on May 19, 2004.

MANDATE

The mandate of the Select Committee on Petroleum Product Pricing was to investigate the supply and pricing of fuels, including gasoline and home heating oil and to determine whether current prices are justified and fair.

This examination was to include, but not be limited to, the following issues: the reasons for the current level of product prices; product supply; reasons for volatility in product prices; the rationale for differences in prices across different regions of the province; factors that affect the viability of low-volume outlets in the rural and urban marketplace; factors that affect the viability of independent retail operators in the province; and, any evidence of predatory pricing practices at the wholesale and retail levels of the market.

The select committee was to make recommendations related to just and reasonable product prices at the consumer level, retail and wholesale margins, and any other actions that may be required to correct imbalances in the distribution and sales of these products to consumers in the province.

PROCEDURES AND OPERATIONS

The Select Committee on Petroleum Product Pricing met and held hearings on the following days:

COMMITTEE MEETINGS

Wednesday, June 30, 2004
Committee organizational meeting

Thursday, July 8, 2004
Briefing session
Witnesses from: Service Nova Scotia and Municipal Relations, Department of Energy and the Department of Finance

Tuesday, July 27, 2004
Briefing session
Witnesses from: Service Nova Scotia and Municipal Relations, Department of Finance
Department of Energy and the Competition Bureau of Canada

Tuesday, August 3, 2004
Briefing session and committee deliberations

Wednesday, August 4, 2004
Committee deliberations

Thursday, August 19, 2004
Briefing session
Witness from Retail Gasoline Dealers Association of Nova Scotia followed by committee deliberations

Friday, August 20, 2004
Committee deliberations

Tuesday, August 24, 2004
Committee deliberations

Thursday, August 26, 2004
Committee deliberations

Monday, August 30, 2004
Committee deliberations

Tuesday, August 31, 2004
Committee deliberations

PUBLIC HEARINGS

Wednesday, July 14, 2004 – Yarmouth
Thursday, July 15, 2004 – Bridgewater
Friday, July 16, 2004 – Halifax
Monday, July 19, 2004 – Sydney
Tuesday, July 20, 2004 – Truro

NOTICES

Notices of committee meetings and public hearings were sent to all members of the committee, staff of the caucus offices, legislative staff, government staff and the news media.

Print advertisements for the public hearings were placed in all provincial English and French daily and weekly newspapers and 30-second radio advertisements were featured on local and regional radio stations.

TRANSCRIPTS

Verbatim transcripts of the public hearings and briefings are available from the Legislative Committees Office, Third Floor, Dennis Building, 1740 Granville Street, P.O. Box 2630 Station M, Halifax, Nova Scotia, B3J 3N5; Telephone 902-424-5787 or toll free 1-888-388-6489; E-mail: legcomm@gov.ns.ca; or through the Nova Scotia Government website at <http://www.gov.ns.ca> .

RESEARCH MATERIAL

The Select Committee on Petroleum Product Pricing sought input from several advisors, including representatives from the Department of Finance, Department of Energy, Service Nova Scotia and Municipal Relations (SNMR), Competition Bureau of Canada, Canadian Petroleum Products Institute and the Retail Gasoline Dealers Association of Nova Scotia.

The Legislative Committees Office compiled most of the research material for the Select Committee on Petroleum Product Pricing. The committee's advisors, witnesses and subsequent presenters provided the majority of the technical information distributed to the committee members.

SELECT COMMITTEE REPORT

The Report of the Select Committee on Petroleum Product Pricing was compiled and written by Ms. Angela Johnson and Ms. Diane LeBlanc of Communications Nova Scotia. Once the initial draft was edited, it was sent to the individual committee members and advisors for consideration. Following revisions, the report was tabled with the Speaker on August 31, 2004.

The final report was distributed to the Speaker/Clerk of the House, all members of the Legislative Assembly, all Nova Scotians who made presentations at public hearings, the legislative libraries in all provinces and territories, and the news media.

The report is available to the general public through the Nova Scotia Government Bookstore at 1700 Granville Street, Halifax, 1-800-526-6575 or 1-902-424-7580. It is also available online at <http://www.gov.ns.ca> .

ACKNOWLEDGEMENTS

The Select Committee on Petroleum Product Pricing wishes to extend its thanks to those Nova Scotians who appeared during the public hearings, shared their individual stories with the committee and voiced their concerns. Members also wish to thank those who telephoned, faxed, e-mailed, mailed or hand-delivered additional submissions.

The committee also wishes to thank:
Ms. Kim Sheppard, Committee Liaison; Ms. Darlene Henry and Ms. Mora Stevens, Legislative Committee Office Clerks; Mr. Paul Read and Mr. Blake Ross; Legislative Television and Broadcast Services; staff of the Creative Services and Communications Support divisions of Communications Nova Scotia; Mr. Robert Kinsman, Editor of Hansard and the entire staff of Hansard Recording Services; Ms. Elizabeth Cooper and Mr Gordon Hebb, counsel to the committee.

EXECUTIVE SUMMARY

The committee began its public hearings in Yarmouth on Wednesday, July 14, 2004, and then travelled to Bridgewater, to Halifax for two sessions, and then to Sydney and Truro.

Presentations by independent retail gasoline operators dominated all five hearings. Representatives from the Canadian Petroleum Products Institute and Petro Canada appeared before the committee, as did officials from XTR Energy and Wilson Fuel Company Ltd. A written submission was received from Imperial Oil Limited but delegates for several other major wholesalers were notably absent. Other presenters included a trucking owner/operator, a university student, representatives from a local think-tank, the nurses and government employees' unions and from such groups as Canadian Petroleum Products Institute and the Retail Gasoline Dealers Association of Nova Scotia.

Perhaps because the hearings took place in the heat of summer, or because of the disproportionate representation of gasoline retailers among the committee witnesses, heating oil was not mentioned as frequently as it might otherwise have been. There was also, in questioning by committee members, a decided focus on the more immediate concern of gasoline prices.

At least two presenters – Lawrence England of Kings County, and the Kiwanis Golden K Club in Sydney – discussed the issue of home heating fuel. Mr. England said taxes on home heating fuel were too high and were of special concern to those on low or fixed incomes. Representatives of the Kiwanis Golden K Club said the province should consider some form of regulation that covered both automotive and home heating fuels.

David Collins, Vice President of Wilson Fuel Company Ltd., who presented in Truro on Tuesday, July 20, told the committee that the price of home heating fuel may not have prompted as much input as automobile fuel because consumers can turn to competing products like propane, wood, electricity and natural gas to heat their homes. Since many of the companies that sell home heating oil in Nova Scotia also provide several price and service options, he said, consumers have more options.

Overwhelmingly, the independent retail presenters were concerned about their shrinking retail profit margins. Many insisted that they were barely making a living and attributed this to government's decision to de-regulate the industry in 1991 and what they deemed unfair and bullying practices by the oil companies.

Some independent retailers also complained of what they said might amount to price gouging and intimidation tactics by wholesalers. They told the committee that if they decided to increase the price of gas at their pumps to increase their profit margin, the oil company would, in turn, increase its price of gasoline to them. This would happen almost instantly, they said, preventing the retailers from making a reasonable profit.

There were also concerns about oil companies invoicing different retailers different prices for the same product. The committee was told that some wholesalers provide volume discounts to retailers who sell large volumes of gasoline. Many presenters pointed out that, in the 10 years since deregulation, the number of independent retail operations has shrunk from more than 1,000 to just 529 outlets. Oil company representatives denied that price gouging or any other improper retailing was taking place. They pointed out that these claims are, in fact, criminal allegations under the federal Competition Act.

People whose jobs or personal situations required them to travel often said fluctuating prices made it difficult for them to budget for gasoline expenditures. One former university student council representative in Cape Breton noted that high gasoline prices can prove especially problematic for students in remote areas where fewer public transportation options make the use of private vehicles essential. He said he knew of some students in the area who were concerned they were not able to attend classes because they could not afford gasoline for their cars.

The retailers' consistent message to the select committee during the five hearings was that some form of regulation is needed to protect independent retailers. Presenters urged committee members to look at adopting a full regulation model currently used by Prince Edward Island and Newfoundland.

Additional presentations were gathered through the Legislative Committees Office via e-mail, mail, phone and fax. In total the committee heard from 51 presenters and received about 70 written submissions.

The committee also held briefing sessions, before and after the hearings, with a variety of advisors who helped them with background information or answered questions that were raised during the public hearings.

Mr. Richard Taylor, Acting Deputy Commissioner – Criminal Matters Branch, Mr. Dermot Jardine, Assistant Deputy Commissioner of the Atlantic Region, and Mr. Michael Sullivan, Major Case Director and Strategic Policy Advisor, of the Competition Bureau of Canada, addressed concerns of price gouging and unfair practices.

Other witnesses included, from Service Nova Scotia and Municipal Relations, Mr. Mike Duda, Senior Policy Analyst, Mr. Bernie Meagher, Enforcement Manager, and Mr. Frank Moore, Appeals Officer; from the Department of Finance, Mr. Bruce Hennebury, Director-Fiscal Policy; from the Department of Energy, Mr. Robert Newcomb, Economist, Mr. Alan Crandlemire, Manager-Gas Marketing and Distribution; and from the Retail Gasoline Dealers Association of Nova Scotia, Mr. Graham Conrad, Executive Director.

Although the committee heard almost exclusively from retailers during the public hearings, its attention was always focused on how to best serve the interest of the consumer by providing a stable/fair pricing policy that also ensures the health of those who make their living in the industry.

The committee has recommended immediate action in the form of legislation to be introduced no later than the spring of 2005. The committee's first preference was to attempt to improve the competitiveness of the marketplace. Its main recommendations, therefore, are for retail divorcement, a prohibition of below-cost selling, and for one rack price. Should this proposal not be acted upon or be delayed, the committee recommends price regulation, also with a target of spring 2005.

It is the committee's intention that the consequences of retail divorcement (legislation that would require the legal separation of the companies responsible for refining petroleum products from the companies that retail petroleum products) be monitored for result. Should these adjustments not prove sufficient, the committee recommends reintroduction of a form of regulation.

Should regulation become necessary, the committee recommends a model similar to the system currently in place in Prince Edward Island. But the committee would like to see some modifications. The chief difference being that the regulator to have as its prime focus the issue of fairness to the consumer rather than simple acceptance of the prevailing price. The committee recommends that the Nova Scotia Utility and Review Board (UARB) administer any regulatory system.

Not all matters of concern to the committee can be quickly or easily rectified. With that in mind, the Select Committee on Petroleum Product Pricing has also made recommendations that touch on the need to advance environmental and social policies that do not rely on fossil fuels. Although the focus in this report is on the price of petroleum products, the committee sees all energy issues as being interconnected. With this in mind, the report also raises issues affecting overall energy policy. It has also recommended further and more in-depth consultations on specific issues and that the Competition Bureau of Canada receive for its further consideration testimony received regarding allegations of predatory pricing.

Following is a list of recommendations made by the select committee:

- that the provincial government recognize that petroleum products are essential commodities, and recognize also that they are non-renewable, and so incorporate a focus on this aspect of energy issues in all relevant provincial policies;
- that the provincial government work with all other governments in Canada on the issues raised in this report, including this as an agenda item at the next First Ministers' meeting;
- that governments work with oil companies to better explain to the public the factors affecting the price to consumers of petroleum products;
- that immediate steps be taken to control petroleum product pricing. The committee recommends that legislation be introduced no later than the spring 2005 session of the Legislature;
- that legislation forbid corporations involved in petroleum exploration, extraction, or refining, from also owning a retail gasoline facility;
- that corporations be required to divest themselves of ownership of any such retail outlets within a reasonable time;
- that existing supply and operation contracts be voided as part of this process;
- if retail divorcement does not seem acceptable or seems likely to be delayed for any great period of time, that a Utility and Review Board-based system of regulation, as described below, be introduced no later than the spring of 2005 session of the Legislature;
- that government continue to monitor the marketplace in gasoline products after retail divorcement to assess whether there have been benefits for consumers;
- that there be a legislated requirement that petroleum products not be sold below acquisition cost;

- that there be legislation requiring refineries to sell their products at the same rack price to all customers.

If, after study, it is determined that divorcement and other changes to the existing marketplace are not affording consumers adequate benefits, the committee recommends:

- that Nova Scotia reintroduce a system of regulation over petroleum product pricing;
- that the Utility and Review Board (UARB) be given the power to administer that system;
- that one retail price for fuel be put in place throughout the province, with a range of 1.5 cents per litre allowed for competition purposes among retailers;
- that fairness for the consumer and a reasonable rate of return to producers be guiding factors when the UARB sets the price for petroleum products in Nova Scotia;
- that the UARB investigate further and more fully the effect of a model that guarantees retailers a built-in rate of return and the result this might have on fair pricing for consumers.

The committee also recommends:

- that a consultation process be held and the province be involved in any discussions regarding a model or contract negotiated between fuel wholesalers and the Retail Gasoline Dealers Association regarding the price for use of credit card or debit systems put in place for the benefit of the consumer;
- that data received by the select committee concerning allegations of predatory practices in interaction between oil companies and retail outlets be forwarded to the Competition Bureau of Canada for further consideration. The committee further recommends that all retail outlet operators who have concerns regarding issues of pricing forward their complaints to the Competition Bureau of Canada.

The committee endorses the following recommendation from the Ontario Gas Prices Review Task Force Report (29 June 2000, page 8):

> That the federal government provide the Competition Bureau with sufficient resources to enable it to effectively enforce a strengthened Competition Act.

It also recommends:

- that the province review all of its buildings and its fleet with a view to promoting energy efficiency;
- that the province require municipalities and the greater public sector to do the same;
- that the province collaborate with municipalities to consider ways to require that land use planning be undertaken in a way to better promote energy efficiency (this might be approached through a new statement of provincial interest added to those under Schedule B to the Municipal Government Act);
- that the 2001 provincial Energy Strategy be revisited with a view to increasing the emphasis on reduction in fossil fuel energy use;
- that a portion of revenues from provincial fuel taxes, including the HST, be allocated to public transit initiatives, in excess of the present levels;
- that public transit initiatives include all regions of the province. In less-densely populated areas these initiatives could include shuttle services, especially those serving persons needing to travel for health-related purposes;
- that the province investigate ways to assist in the development of alternatives to existing fossil fuels, such as biodiesel;
- that the province investigate ways to support fuel-efficient vehicles and energy-efficient buildings. Such steps could include tax incentives
- that the province continue to monitor the economic and social health of small, remote communities;
- that the province seek ways to support the continued availability of necessary supplies of fuel in such communities;
- that the province further investigate or monitor the issues of emergency preparedness, First Nations' rights and fuel tax exemptions.

Given that an all-party committee has now worked on these issues with some measure of success and has now developed knowledge of the subject, the committee also believes it would be appropriate for the Legislature to consider extending the committee's mandate through the initial implementation stages of any new system, if that could be of use.

Verbatim transcripts of the select committee's public hearings and briefings can be found at
<http://www.gov.ns.ca/legislature/hansard/comm/pp/> .

OVERVIEW OF INDUSTRY AND MARKETS

**Information compiled from documents supplied by Service Nova Scotia and Municipal Relations, Nova Scotia Department of Energy, Wilson Fuel Company Ltd. and the Canadian Petroleum Products Institute.*

STRUCTURE

The petroleum products industry is mature, large and complex. Pricing is determined and influenced by the commodities market. Below is a snapshot of the industry and how all the players relate to each other.

Crude Supply – This is the raw product. In Nova Scotia 45 per cent of our crude oil is Brent crude, which comes from the North Sea. Other sources are South American Venezuela crude and Canadian Hibernia crude.

Integrated Oil Companies – These companies are involved in three aspects of the business: the exploration and extraction of crude oil, manufacturing or refining, and marketing. Examples of these companies include Imperial Oil/Esso, PetroCanada and Shell.

Refiners Serving Nova Scotia – These companies refine and market the product.

- 90 per cent of product used in Nova Scotia is produced locally in Dartmouth at Imperial Oil's refinery
- 10 per cent of product is shipped into Nova Scotia from Irving's Saint John, New Brunswick, refinery
- Other refineries (in places like Buffalo, Rochester and Albany) could provide alternate supplies
- Imperial Oil has reciprocal exchange agreements with PetroCanada, Shell, Ultramar and Irving
- Product can be imported from other refineries through a facility on Barrington Street in Halifax and through the bulk storage tank farm in Port Hawkesbury (Statia Terminals)

Furnace Oil – Wholesalers / Retailers

- Close to 90 operate in Nova Scotia, some operating in small regions, others providing provincewide service

- Full-service operators include such services as automatic delivery, equal payment plans, price insurance, equipment cleaning and maintenance (e.g., Wilson, Thermoshell, Esso Home Comfort, Ultramar, Superline, Scotia, Emera, Irving, Cooks, and Mercer)

- Discount operators offer price per service (e.g. The Oilman, Cozy, Discount Fuels, Anytime, Reliable, Save-on-Fuels, etc.)

Integrated Wholesalers/Retailers of Gasoline – These companies are wholesalers that sell to independent retailers who "fly their flag," but they may also have corporate stations. They are regional players like Irving and Ultramar, local companies like Wilson Fuel or Mercer and multi-national companies like Imperial Oil and Shell. Others include PetroCanada, Emera and XTR.

Additional Retailers of Gasoline – These are strictly sellers of gasoline. They fall within two separate categories: local licencees and Big Box operators.

- Local licencees are small, private sellers of motor vehicle fuel that are usually locally owned. The dominant wholesale supplier to this group is Wilson Fuel.

- Big-Box" retailers use the sale of gasoline as an attraction of convenience to bring customers into their respective stores (for example, Co-op, Canadian Tire, Sobey's and Atlantic Superstore).

How it Works:

Petroleum is a commodity with a worldwide marketplace, both of sellers and of buyers. Major producing nations are found in North and South America, in the Middle East, in Africa, and in Asia. The advanced industrial nations are the major users and purchasers of the product, but rapidly developing nations, especially China, are becoming significant actors.

The ultimate price to consumers is made up of various elements including the price of crude, refining, wholesaling, retailing, and taxes. The cost of exploration and production, and the cost of refining are basic and also involve profits ("margins"); there is also a significant speculative trading factor that affects both of these elements. Because of the speculative trading of the commodity (for example, on the New York Mercantile Exchange), the price is not governed strictly by supply and demand.

Refineries convert crude into useable products such as gasoline and diesel fuel. At that point in the process, the price at the refinery gate is commonly known as the "rack" price (sometimes explained as a refinery acquisition cost and sometimes as a reference to pickup at a terminal truck-loading rack). Ocean-going tankers (VLCCs or "very large crude carriers") can transport amounts of crude oil, or indeed refined product, to markets that may be some distance from point of origin.

In Canada the industry tends to be integrated, which means the same major oil companies that are involved in production are also involved in refining and in retailing. Nova Scotia has a small marketplace and one refinery. There are few barriers to movement of product between provinces or between Canada and the United States. The rack price in Nova Scotia tends to follow the Boston and New York spot market price. Wholesalers then supply associated retailers or others. Retailers add a margin. The federal government taxes fuel, as does the provincial government. The result is the price to consumers.

What goes into the price of a litre of gasoline?

Fluctuations in the price of crude and in the price that an individual retailer pays the wholesaler, among other things, may affect what a motorist pays at the gasoline pump. The following snapshots give the breakdown for the price of regular gasoline at a self-service pump.

On **May 16, 2004**, for example, Nova Scotians paid 96.9 cents for a litre of regular self-serve gasoline. Of that total:
– 36.3 cents was the price of crude
– 18.6 cents was the refiner's operating margin
– 3.9 cents was the marketer's operating margin
– 10 cents was federal excise tax
– 15.5 cents was provincial excise tax
– 12.6 cents was HST

On **August 24, 2004**, however, motorists paid 92.5 cents per litre for that same regular self-serve gasoline. Of that total:
– 37.4 cents was the price of crude
– 8.5 cents was the refiner's operating margin
– 9 cents was the marketer's operating margin
– 10 cents was federal excise tax
– 15.5 cents was provincial excise tax
– 12.1 cents was HST

OVERVIEW OF GASOLINE REGULATION MODELS

Many independent retailers urged the committee to consider some form of regulation with a guaranteed four- to five-cent retail profit margin. Three provinces that use some form of regulation are Quebec, Prince Edward Island and Newfoundland and Labrador.

Quebec: The Regie de l'energie du Quebec was established in 1997 to oversee the petroleum marketplace. Its tools are investigation, publicity, and the power to set a minimum price. It requires that there be no retail price below rack.

Prince Edward Island: The Island Regulatory and Appeals Commission sets retail prices for each company desiring to operate in the province. The commission makes adjustments, usually in response to company written requests, but not normally more often than once per month. The price for each company is in effect provincewide. The price includes a margin intended for retailers. The price allows for a range within 1.5 cents per litre to allow companies to compete with each other.

Newfoundland and Labrador: Newfoundland and Labrador controls both the retail and dealer wholesale pricing. The system is similar to that in P.E.I., except that geographic zones incorporate the differing costs of transportation. The retail margin is slightly higher, at 5 cents per litre. Price adjustments are allowed if there is an increase in the spot price of refined product of 3.5 cents per litre over a five-day period. The system was last reviewed in July 2003, and the Newfoundland and Labrador government declared its desire to maintain a system of price regulation.

PRESENTATIONS

Full transcripts of the meetings can be found at <http://www.gov.ns.ca/legislature/hansard/comm/pp/> .

YARMOUTH

The Yarmouth meeting was the first public hearing in the series of meetings of the select committee. It was held at the Rodd Colony Harbour Inn, 6 Forest Street, Yarmouth, Nova Scotia on July 14, 2004. About 25 people attended.

Committee members in attendance were Mr. Bill Dooks, Mr. Brooke Taylor, Mr. Frank Corbett, Mr. James DeWolfe, Mr. Charles Parker, Mr. Russell MacKinnon and Mr. Gerald Sampson. Mr. Daniel Graham was absent and was replaced by Mr. Stephen McNeil, MLA for Annapolis.

The chairperson, Mr. Dooks, opened the session by explaining the mandate of the committee. He reminded the audience that the hearing was public and would be recorded. He also detailed additional ways interested parties could submit a presentation, asked the committee to introduce themselves and then welcomed the first presenter.

Each presenter was given 15 minutes and then committee members, if presenters were agreeable, asked questions.

PRESENTERS:

Four of the five presenters were independent retailers. They included **Mr. Jason and Ms. Alison Dickie, Mr. Malcolm Madden, Mr. Walter MacAlpine** and **Mr. Daniel Thimot**, who is also the president of the Retail Gasoline Dealers Association.

Most had been in the business for decades and/or were carrying on a family business. All talked about their low profit margins and said they wanted the committee to adopt some form of regulation. Many felt that the fuel companies were forcing them out by employing intimidation tactics and that these companies were responsible for their declining profits.

Mr. Barry Wiser was the final presenter. Mr. Wiser is a psychologist by trade. He said that lowering taxes on gasoline would be the easiest way to reduce the price, but that the province would have to make up for the lost revenue somewhere else and the consumer would not benefit in the long run. He suggested that the answer lies in changing behaviour. He said people need to use fewer petroleum products and the province needs to support and promote that kind of change. For example, he said, environmentally friendly cars, diesel, hybrid, smaller more efficient vehicles use 25 to 30 per cent less fuel and still have the same performance. He suggested government could offer tax incentives or rebates for using these efficient vehicles.

BRIDGEWATER

The Bridgewater meeting was the second in the series of public hearings and was held at the Auberge Wandlyn Inn, 50 North Street, Bridgewater, Nova Scotia on July 15, 2004. More than 30 people, including media, attended.

All of the select committee members were in attendance. Ms. Diana Whalen, MLA Halifax/Clayton Park, and Human Resources Minister Carolyn Bolivar-Getson, the MLA for Lunenburg West, attended the session and were recognized by the chairperson.

Each presenter was given 15 minutes and then committee members, if presenters were agreeable, asked questions.

PRESENTERS:

Most of the presentations were from independent retailers who wanted some form of regulation that would guarantee a minimum/maximum retail profit margin. Most were running family-owned businesses. **Ms. Sarah Allen** spoke on behalf of her parents, Frank and Midgy Allen; **Ms. Margo Hanley** said she had to take a full-time job outside of the business to make ends meet. **Mr. Peter Mader** said rural service stations were disappearing. He was concerned that essential service providers, like fire department teams and search and rescue crews, had to travel an hour to get fuel for their equipment. In 2003 **Mr. Rodney Grace** sold close to 8-million litres of gasoline but is still not making a profit. **Mr. Casey Publicover** had only been in the business for a year but had yet to break even.

Mr. Lawrence England, an independent retailer, is also the branch president for the Kings County Retail Gasoline Association. He advocated removing the provincial portion of the HST from the price of home heating fuel. He said seniors and low-income families were "glorified tax collectors for the government" and "getting nothing out of it."

Mr. Mike Power, counsel for the Retail Gasoline Dealers Association of Nova Scotia, presented on behalf of the individual retailers regarding retailers' claims that oil companies use intimidation tactics. He said that he was aware of oil companies "shifting their weight around." He said that fair petroleum leasing guidelines should be looked at to promote equality in the marketplace.

HALIFAX

The Halifax sessions were the third stop for the committee. There were two hearings held at Province House, 1726 Hollis Street, Halifax, Nova Scotia on July 16, 2004.

Committee members in attendance were Mr. Bill Dooks, Mr. Brooke Taylor, Mr. James DeWolfe, Mr. Charles Parker, Mr. Howard Epstein, Mr. Russell MacKinnon and Mr. Gerald Sampson. Ms. Michele Raymond replaced Mr. Frank Corbett and Mr. Keith Colwell replaced Mr. Danny Graham for the evening session. Fewer than 20 spectators attended.

Each presenter was given 15 minutes and then committee members, if presenters were agreeable, asked questions.

PRESENTERS:

Canadian Petroleum Products Institute – CPPI: Mr. Bill Simpkins, CPPI - Atlantic Representative; Mr. Carol Montreuil, CPPI - Vice President; and Mr. Tom Lawson, National Pricing Manager, PetroCanada

Mr. Bill Simpkins detailed the structure of the industry and provided charts, graphs and facts and figures. He stressed that provincial and federal taxes were the largest component in the price of a litre of gasoline. He said if taxes were removed, the Canadian price for gas would be less than the price of gas in the United States. He addressed the issue of rural gas station closures by saying this was not unique to the petroleum industry. He said other rural retail outfits were closing as well because people are physically moving from rural settings to larger centres. He said it was just a sign of the times and not necessarily the fault of oil companies. He concluded his portion of the presentation by stating that he opposed regulating the petroleum industry because it rewarded the least efficient operator with a guaranteed profit margin that the operator did not earn. Mr. Simpkins also touched on the accusations of predatory pricing and called these unfounded. He said that the Conference Board of Canada did an exhaustive study of this issue in 2001 and concluded that there was no gouging, collusion, or predatory pricing practices among gasoline companies.

After Mr. Simpkins' presentation, **Mr. Tom Lawson** answered questions specific to the company he works for, PetroCanada. **Mr. Carol Montreuil** touched on the issues of retailer profit margins and attributed the low margins to the natural progression of change in world markets in the last 15 years.

For the last 10 years, **Mr. Graham Conrad** has been the Executive Director of the **Retail Gasoline Dealers Association of Nova Scotia.** He also has 11 years experience working with Imperial Oil in the automotive marketing division, plus an additional 12 years as an Esso retailer. He talked about the inability for retailers to establish profit margins. His concern was what he called the "dramatic decline" in the number of retail outlets in the rural areas.

Mr. Mark Parent, MLA Kings North, appeared before the committee on behalf of his constituents. He said he had been approached by retirees who protested the quick spikes in gas prices and were concerned about the effect of high gas prices on Valley agriculture. He said most residents who contacted him wanted the province to adopt some form of regulation similar to the Prince Edward Island and Newfoundland and Labrador models or to support more energy-efficient vehicles.

Mr. Wayne Pace, an independent retailer, owns and operates an Esso station in Tantallon and is a lessee of a Shell station in Lower Sackville. He said that the oil companies control the retail and wholesale prices of gasoline in Nova Scotia so therefore they control the retailer's income. He said the retailers are contractually obliged to buy product from the company holding their contract. He further explained that there are several charges retailers have said "eat away" at their profit margins — like point-of-sale systems, and loyalty programs such as Esso Extra cards and Petro Points — that they have no choice but to pay. He also corroborated other retailers' experiences when he said that when he has decided to raise his retail gas price, the oil company increased the wholesale price to him by the same amount. He also talked about provincial and federal taxes making up the largest portion of the gas price and about the inevitability of additional rural station closures.

Mr. Bill Shellnutt is a professional accountant who represents the independent retailers. He has been involved in the gasoline business for 30 years. He has made presentations to the New Brunswick Public Utilities

Board attempting to get price increases for the dealers over the years. He spoke to the committee about his experiences dealing with the retailers and said that since deregulation many have struggled and "the once predictable, consistent industry" has turned into one "that is unpredictable and difficult to budget." He advocated establishing a minimum/maximum margin system to ensure stability.

Mr. Mitch Primeau, a retail petroleum development consultant, has worked in the petroleum business for about 30 years. He has been consulting for the last six in New Brunswick. He negotiates the oil company's contracts on behalf of the retailers. He talked about the structure of the industry and detailed the various "players." He said there are positive and negative factors in a regulated or deregulated industry but with a regulated market comes a level playing field so that people can compete. He conceded that regulation was not about better prices, but about a fair and equitable price for the product, ensuring consumer confidence. He said, "they (the consumers) have to have faith in you as their representatives to ensure that they are getting a fair price for their product and that you also protect the people who are providing those services because in the long run the consumer's going to suffer if the dealers aren't here to provide those services."

Mr. Andrew Pelletier, Manager, Public Affairs, **PetroCanada, for Quebec and Atlantic,** told the select committee he wanted to address a claim made at the Bridgewater hearing on July 14, 2004. He said Ms. Margo Hanley's claim of intimidation by the oil companies was investigated by the representative in her area, who found no evidence of the intimidation she cited.

Mr. William McCarthy, a retail operator since 1956, talked to the committee about his concerns over the business practices of the oil companies. These included wholesale prices being controlled by the oil companies and licensing issues. His final position was that the committee should level the playing field. He said: "regulation may help but divorcement of refiners from owning, distribution and marketing would give true competition."

Ms. Joan Jessome, President, **Nova Scotia Government and General Employees Union (NSGEU),** presented on behalf of union members who use their own cars for work. These civil servants included public health inspectors, food inspectors, property assessors and health care workers, to name a few. She said that it was hard for these people to budget for gas when the reimbursement allotment has increased nine cents in a decade while the cost to buy, lease, rent and operate a vehicle has increased more than 70 per cent in the same time frame. On behalf of the NSGEU, she asked the committee to consider a regulated model like Prince Edward Island.

Mr. Ian Crowe, a private citizen, was the final presenter. He wanted the committee to be aware of the different tax structure in Prince Edward Island and Newfoundland and to take that into consideration when comparing gas prices between these provinces and Nova Scotia. He said when you take away the taxes, Nova Scotia's gas is cheaper and he did not want the committee to overlook this when deciding if it should adopt a similar regulation model.

SYDNEY

The Sydney meeting was the fourth hearing in the series of public meetings of the select committee. It was held at the Delta Sydney, 300 Esplanade, Sydney, Nova Scotia on July 19, 2004. More than 60 people attended.

Committee members in attendance were, Mr. Bill Dooks, Mr. Frank Corbett, Mr. James DeWolfe, Mr. Charles Parker, Mr. Howard Epstein, Mr. Russell MacKinnon and Mr. Gerald Sampson. Mr. Brooke Taylor was absent and replacing him was Mr. Ron Chisholm.

PRESENTERS:

There were a variety of presentations at the Sydney hearing. **Ms. Frances Oommen's** presentation centred on environmental issues. She said concerns about oil supplies in future mean people should be considering the use of alternate fuel sources, such as natural gas and wind energy. She said the committee should also consider using alternate modes of transportation instead of cars.

Hilda and Richard Cormier are independent retailers of a family run station, which existed under regulation, under deregulation, and through the change from gallon to litre. They said the station is now struggling to survive.

Councillor for District 14, Cape Breton Regional Municipality, **Mr. Gordon MacLeod** said he has had residents complain to him about the price of gas and home heating oil. He said they felt they were victims of roller coaster pricing.

Mr. David MacRae, an owner/operator, talked to the committee about intimidation tactics used by the oil companies. When he complained about low profit margins he said he was told that if he does not go along, the oil companies would get aggressive with pricing in his area.

Ms. Catherine Robertson is an independent retailer asking for a regulated model. She told the committee she is not making enough to live on and has to compete with a station on a native reserve that sells gas for 10 cents less than she can buy it.

Mr. Lloyd Palmer and Mr. Tom Taylor, from Kiwanis Golden K, encouraged fairness at the pumps and the adoption of a system for both gasoline and home fuels that allows citizens and businesses to budget for their monthly expenditures, gives a fair profit for retailers and eliminates gas shock at the pumps. They brought charts that compared prices in Prince Edward Island to prices in Nova Scotia. They said that the federal and provincial tax on fuel is too high and called for immediate regulation of gas prices. Mr. Palmer noted that the Kiwanis Club of North Sydney had collected more than 3,500 signatures since March of 2004 on a petition that was being forwarded to government leaders.

Mr. Scott Thomas is a former vice president of the student union at the University College of Cape Breton (UCCB). He noted that high gasoline prices can prove especially problematic for students in areas where there are fewer public transportation options. He said UCCB is a commuter college and many students must rely on private vehicles to get back and forth. He said he had heard of some students not being able to attend classes because they could not afford gasoline for their cars and that a regulated model would allow students to budget better.

Mr. John Shaw was the final presenter. He suggested separating the retailers from the wholesalers, meaning wholesalers could not be retailers and vice versa. This is commonly known as divorcement and he believes would help to level the playing field.

TRURO

The Truro meeting was the fifth and final hearing in the series of public meetings of the select committee. It was held at the Best Western Glengarry, 150 Willow Street, Truro, Nova Scotia on July 20, 2004. More than 50 people attended.

Committee members in attendance were Mr. Bill Dooks, Mr. Brooke Taylor, Mr. Frank Corbett, Mr. James DeWolfe, Mr. Charles Parker, Mr.

Howard Epstein and Mr. Gerald Sampson. Mr. Russell MacKinnon sent regrets.

15 presentations were scheduled and six more were added on site.

PRESENTERS:

Mr. David Collins, Wilson Fuel Company Ltd., Vice President, Canadian Independent Petroleum Association, and **Mr. Kim Wootten**, XTR Energy, presented the wholesaler side of the issue.

Wilson Fuel Company Ltd. has the distinction of being the largest independent marketer of petroleum productions east of Quebec. It is a wholesale/retail operation that was established in1909. The company operates about 20 of its own stores and supplies an additional 180 outlets in Atlantic Canada. Mr. Collins set out some of the pros and cons of a variety of models of regulation. On balance, he spoke against a regulated margin for retailers, saw some advantages for retail divorcement and favoured the Quebec regulatory model. He indicated that the issue is a complex one and that regulation may hamper healthy competition.

Ken Wootten is president of **XTR Energy**, based in Burlington, Ontario. XTR is a wholesaler of gasoline. The company only sells fuel to owner/operators and has very little overhead so can sell to the retailer at a good price. Mr. Wootten opposed the regulation of the price of gasoline, saying it would make it difficult for companies such as his, which could add competition to the marketplace but which did not have deep pockets, to judge the right moment for entry into the market.

The other presentations were made by independent retailers, **Mr. Roy Pettigrew, Mr. Henry Overmars, Mr. Bernard Kavanagh, Mr. Elroy Hanes and Mrs. Beth McNeill.**

Mr. Marvin Robbins is a new and used car dealer. He said he has noticed people buying more economical cars because they are keeping their eyes on their disposable income.

Ms. Sherri Richard, a constituency assistant to select committee member Brooke Taylor, brought a six-page petition requesting regulation with 164 names on it. She also talked about her need to commute and how high gas prices have affected her choice of family outings like day trips.

Mr. David Parker, Councillor Pictou County and brother to select committee member Mr. Charlie Parker, advocated some form of regulation on behalf of constituents who have complained to him about rising gas prices. One solution he suggested was government not charging HST if the gas price goes above 99 cents. He also spoke about heating oil prices for seniors. He suggested that they should get a rebate of some kind because they are on a fixed income and find it hard to make ends meet during the winter months.

Mr. Brian Crowley, presented on behalf of AIMS, the **Atlantic Institute for Market Studies**. AIMS is a privately funded think-tank, which gets 3 per cent of its budget from oil companies. He opposed any form of government regulation of the price of petroleum products. He suggested the free operation of the marketplace, including entry by retailers whose main business is not petroleum, would deliver the best price to consumers.

Ms. Janet Hazelton, President **N.S. Nurses Union,** presented on behalf of the Victoria Order of Nurse and home health care services. She told the committee that travel has become too expensive and nurses are opting to take salaried jobs in hospitals and that an important service may become obsolete if gas prices are not stabilized and continue to rise.

Mr. Darrell Rushton, an independent trucking owner/operator said it was hard to budget yearly gas expenditures when the price is so volatile.

Mr. Dan MacEachern and Mr. Charles Wight, private citizens, believe that Nova Scotia is too small to do anything about this issue. They said consumers are helpless and that the only way to make change is for the federal and provincial governments to get together to reduce the tax.

THE ISSUES

The Select Committee on Petroleum Product Pricing began its deliberations on Wednesday, August 4, 2004. After two sessions, all members agreed that the issue was a complex one. They concluded that "no aspect of the oil business is separate from any other. As soon as we begin examining costs we become caught up in the environmental and health implications, community planning, tax policies, the expense of running an automobile including insurance costs, world markets, inflation and rural sustainability."

The following are issues that members debated at length before the committee agreed upon its recommendations:

Pricing:

The oil business is an international one, subject to the political, social, business and financial influences of our national and international economies and policies. Large corporations and even individual nations sometimes wield enormous power by controlling both the production and the sale of vast quantities of petroleum products. With these external realities, and in the absence of any federal policy on petroleum product pricing, it is difficult for a province like Nova Scotia to control some parts of the pricing equation. As said to the committee by PetroCanada in its submission:

> "…[change in price] has been largely attributable to a combination of geopolitical events and changes in the market fundamentals affecting the prices of crude oil and wholesale gasoline…[One] of the key points in our submission [is] that retail prices in Canada are influenced primarily by changes, both up and down, in crude oil and wholesale gasoline costs." (PetroCanada submission, July 26, 2004, p. 3)

Still, members of the select committee are concerned that rising and dramatically fluctuating prices make it difficult for the average Nova Scotian to budget for such essential commodities as home heating and transportation costs. They understand the frustration of consumers who wonder how and why prices can vary from community to community and from hour to hour.

There is evidence that the increase in the price of petroleum products, although relatively stable to the consumer over time when allowances are made for inflation, is now moving up and economists suggest that the price may well continue to increase. There is also much talk in the financial press of the negative impact on the economy of increased energy costs including the loss of jobs, inflation, and pressure to increase interest rates.

The committee was also impressed by many independent gasoline retailers' requests that it consider the impact on pricing presented by Big Box stores that use petroleum products as a kind of loss leader to attract customers to their outlets and by wholesalers who may sometimes charge retailers differing prices for the same product. Members also want to ensure that oil companies do not make a profit from credit card system charges and that retail operators are billed only for the direct costs of using those systems.

Throughout its discussions the committee therefore focused its attention on stability and fairness of prices.

Regulatory and legislative change:

The committee was faced with a number of options to explore on this front. One alternative, for example, was to recommend no changes to the existing system. This notion was collectively dismissed early in the proceedings. Other options included changes to the tax system and environmental changes. These issues are addressed later in the report. The committee also considered retail divorcement and regulation.

The committee quickly agreed that legislative action was necessary to provide the stability and assurance Nova Scotians require.

The committee spent some time discussing divorcement (legislation that would require the legal separation of the companies responsible for refining petroleum products from the companies that retail petroleum products). The issue of possible federal divorcement legislation was well addressed in the *Ontario Gas Prices Review Task Force Report* (29 June 2000, pages 42, 43), which said:

> "In a number of jurisdictions in the United States, legislation is in place that prohibits gasoline refineries and gasoline outlets from being owned by the same parent company. The term given to this is "divorcement". Which results in the retail gasoline outlets no longer being directly owned by the integrated oil companies that own the refineries. This reduces the control that the integrated oil companies have on the retail market by removing their ability to directly set the retail price for gasoline."

As well as these states, the system is also in place in some jurisdictions in New Zealand and Australia.

Although divorcement is a topic that could be considered on a nationwide basis by federal authorities, the committee believes the province also has the necessary jurisdiction to deal with the matter. Although further legal investigation is necessary, it appears this may legitimately be approached under section 92 (10) (11) (12) and/or (16) powers under the Constitution.

One of the submissions to the committee, that of PetroCanada, urged the committee to adopt a view expressed by the Restrictive Trade Practices Commission, to the effect that:

> "…consumers are not entitled to "fair" price levels, but only prices set by a competitive process. (PetroCanada submission, July 26, 2004, p. 15)

As noted above, the committee does believe in fairness to the consumer and also sees flaws in the existing system that make is it less competitive than it ought to be.

The committee also considered the direct and indirect costs of implementing any new regulatory system. Members studied the costs of gasoline in Nova Scotia and Prince Edward Island in an attempt to understand any price differentials that may result from attempts at price regulation. The greatest issue was not that of direct cost to government, since in P.E.I. the regulated companies are required to pay a fee to the Island Regulatory and Appeals Commission to cover the costs of the small staff who administer the system The issue was whether regulation resulted in a price to customers that was greater than in an unregulated marketplace. The committee recognized that if regulation directly affected the price at the pump, this would be an important fact in its deliberations. While the prices (without taxes) paid by consumers in Prince Edward Island were often higher, the committee agreed that other factors, like transportation costs, might be at play. In the end, the differential did not prevent the committee from arriving at its conclusions and recommendations.

The committee also spent considerable time discussing the possibility of implementing a model that regulates wholesale and retail prices and guarantees a minimum and maximum retail mark-up/margin, how it could establish or assign a regulatory body if regulations were adopted, how to best control the fluctuating prices charged at distribution terminals (the rack price) and the possibility of a nationwide approach to the issue of petroleum product pricing.

Tax policies:

Throughout their discussions, members of the committee were aware that many issues relating to tax policy did not fall within the province's absolute jurisdiction. Still, the committee considered the influences of these policies at some length: The possibility of provincial changes in tax policy or further investigation of tax incentives that encourage the use of more energy efficient products and services; removal of an amount equivalent to the

HST from heating oil; ways of ensuring that federal gas tax is returned to Nova Scotia and of ensuring that Nova Scotia is spending all gasoline tax and transportation-related fees on transportation costs

Environmental issues:
Although the committee did not receive submissions from any specific environmental advocacy groups, it did hear from several individuals who addressed concerns that the committee shares regarding the need to adopt policies that discourage over-dependence on fossil fuel supplies. Members discussed, for example, the need for more funding for public transportation and how best to decrease public reliance on fossil fuels by increasing energy efficiency and developing alternatives to existing systems.

Social issues:
The committee was also struck by the discussion surrounding more remote communities and the vital role that gasoline stations play in the health and vitality of these areas. They agreed that having a gasoline station in or nearby a community is critical for essential services, like school buses and volunteer fire departments, and for citizens and tourists. Many presenters pointed out that, in the 10 years since deregulation, the number of independent retail operations has shrunk from more than 1,000 to just 529 outlets (a full list of gas stations is available on the website of Service Nova Scotia and Municipal Relations at <http://www.gov.ns.ca/snsmr/gasstations/listings.asp>). Much debate centred over how best to ensure that remaining operators at these stations can best be helped.

Public input and communication:
Not all potentially interested parties were represented at the public hearings. The committee was particularly concerned by a lack of participation by consumers, by people representing environmental concerns, as well as representatives of some of the major industry groups representing the interests of those involved in exploration, extraction and refining product.

RECOMMENDATIONS

Pricing:
Despite the sticker shock of $1 per litre gasoline, and the prospect of increased costs to come, no unified policy direction has emerged in Canada. Indeed, Canada is a petroleum-producing nation as well as a major consuming nation. The last federal initiative, the National Energy Policy, was highly controversial. No one national policy is expected to emerge. At the same time, some national policies have prevailed, primarily the commitment under the North American Free Trade Agreement (NAFTA) not to impose any export tariffs that are not also applied domestically, and a commitment to certain continued levels of exports.

Not only is there no distinct Canadian domestic price for petroleum products, but the price also varies from province to province because of taxation levels, because of varying transportation costs, and because of local conditions of competition. Even though some of these factors are understandable, Nova Scotians are not entirely satisfied that prices here are as low as they might be or that the price to customers is fair.

The committee notes that it is widely reported that a major part of the cost of crude oil is not directly related to the costs of exploration and extraction, but to commodities market speculation. The committee also notes that margins for refiners of petroleum products have been increasing and seem to be at record levels. At the same time, the committee is very aware that this province has no direct legislative control over OPEC nations or others, nor any control over fluctuations in the commodities marketplace. The committee is also aware that although one refinery is located in Nova Scotia, it is quite able to trade its products wherever it finds customers.

While the committee has identified customer concern with the volatility of prices as a part of the state of concern, members do not see volatility as the core issue, but fairness and affordability.

Committee members are also aware of the complexity of the industry, and the basic need for caution in making recommendations. They therefore believe that ongoing study and debate needs to follow this report. The committee begins its recommendations with the following:

- that the provincial government recognize that petroleum products are essential commodities, and recognize also that they are non-renewable, and so incorporate a focus on this aspect of energy issues in all relevant provincial policies;

- that the provincial government work with all other governments in

Canada on the issues raised in this report, including this as an agenda item at the next First Ministers' meeting;

- that governments work with oil companies to better explain to the public the factors affecting the price to consumers of petroleum products.

Regulatory and legislative change:
The committee agreed it was better not to move to a full regulatory system unless necessary. Members prefer a system in which the marketplace provides fairness to consumers. However, they also agree that some legislated adjustments are needed for that marketplace to be more fully competitive. The committee has come to believe that several changes would be appropriate.

The first issue that needs to be addressed concerns the seriously unequal bargaining position of the independent gasoline retailers vis-à-vis their suppliers. The committee recognizes that many retail stations are not independently owned, but are managed by employees of the "flag" companies. Precedent exists for retail divorcement in some U.S. states and in Australia and New Zealand. With this in mind, the committee recommends:

- that immediate steps be taken to control petroleum product pricing. The committee recommends that legislation be introduced no later than the spring 2005 session of the Legislature;

- that legislation forbid corporations involved in petroleum exploration, extraction, or refining, from also owning a retail gasoline facility;

- that corporations be required to divest themselves of ownership of any such retail outlets within a reasonable time;

- that existing supply and operation contracts be voided as part of this process;

- if retail divorcement does not seem acceptable or seems likely to be delayed for any great period of time, that a Utility and Review Board-based system of regulation, as described below, be introduced no later than the spring of 2005 session of the Legislature.

The committee believes that retail divorcement would strengthen competition in the marketplace, to the benefit of the customer. At the same time, it is important that this be monitored and tested. It therefore recommends:

- that government continue to monitor the marketplace in gasoline products after retail divorcement to assess whether there have been benefits for consumers;
- if benefits to consumers are not indicated, that government consider introducing a system of regulation, as detailed below.

The committee has not considered it necessary to propose retail divorcement for the home heating fuel sector of the market because a reasonable degree of competition seems to exist. Members note the existence of almost 90 retail vendors of home heating fuel, although some operate only in limited parts of the province. They also see the existence of a range of services, generally lower prices per litre and some advantages for bulk purchasing, for example for owners of multi-unit apartment buildings through the Investment Property Owners Association.

The second change to the existing marketplace that the committee is recommending concerns the sale of petroleum products by retailers whose primary business is the sale of other types of products. Some grocery stores and general merchandise retailers have started to add gasoline outlets to their offerings. This is done as an attraction of business through convenience; gasoline may also sometimes be offered as a loss leader. Although the customer may receive an immediate advantage when gasoline is sold as a loss leader, the committee is concerned that other competitors may be driven out of business and the initial advantage to customers lost. Quebec has a legislated requirement that forbids the selling of gasoline below cost. The committee recommends:

- that there be a legislated requirement that petroleum products not be sold below acquisition cost.

The third change to the existing marketplace has to do with the price charged by refineries to various customers. The committee heard evidence that this is a feature of the industry as it now stands. It recommends:

- that there be legislation requiring refineries to sell their products at the same rack price to all customers.

Committee members believe these changes to the existing system should bring the appropriate benefits to customers. If ongoing monitoring of the situation shows that is not the case, however, they are prepared to see a form of regulation of price come to Nova Scotia. When price regulation is implemented, the committee favours a model similar to the one currently in place in Prince Edward Island.

But the committee would like to see some changes. Members favour for example, administration by the Utility and Review Board (UARB), based on a system similar to that used for other essential, regulated commodities such as electricity. It would like to see a test of fairness to the customers as well as fairness to the suppliers. It appears that in PEI, the international price, tied to a standard such as the New York Mercantile Exchange (NYMEX) price, is simply accepted without question. Members envision a regulatory system that modifies this.

If, after study, it is determined that divorcement and other changes to the existing marketplace are not affording consumers adequate benefits, the committee recommends:

- that Nova Scotia reintroduce a system of regulation over petroleum product pricing;
- that the Utility and Review Board (UARB) be given the power to administer that system;
- that one retail price for fuel be put in place throughout the province, with a range of 1.5 cents per litre allowed for competition purposes among retailers;
- that fairness for the consumer and a reasonable rate of return to producers be guiding factors when the UARB sets the price for petroleum products in Nova Scotia;
- that the UARB investigate further and more fully the effect of a model that guarantees retailers a built-in rate of return and the result this might have on fair pricing for consumers;
- that a consultation process be held and the province be involved in any discussions regarding a model or contract negotiated between fuel wholesalers and the Retail Gasoline Dealers Association regarding the price for use of credit card or debit systems put in place for the benefit of the consumer.

In addition to these regulatory and/or legislative changes, as a result of its findings the select committee:

- recommends that data received by the select committee concerning allegations of predatory practices in interaction between oil companies and retail outlets be forwarded to the Competition Bureau of Canada for further consideration. The committee further recommends that all retail outlet operators who have concerns regarding issues of pricing be encouraged to forward their complaints to the Competition Bureau of Canada;

- endorses the following recommendation from the *Ontario Gas Prices Review Task Force Report* (29 June 2000, page 8):

> That the federal government provide the Competition Bureau with sufficient resources to enable it to effectively enforce a strengthened Competition Act.

This refers specifically to the power of the Commission of Competition to conduct a research inquiry, a power removed from the legislation in 1986.

Tax policies:
The province cannot influence all the taxes included in the price of petroleum products. It can do nothing, for example, to directly influence the federal excise tax. The province does, however, have clear jurisdiction over the provincial tax component in the price being charged customers. Many people have suggested that reducing the provincial tax component is the most direct way to reduce the price being charged customers. The committee has debated various possibilities at length.

Members recognize that the provincial fuel tax was increased by 2 cents per litre in the budget of 2002. They also recognize that the provincial treasury benefits when the core price of gasoline and home heating fuel increases because of increases in the HST attributable to petroleum sales. Officials from the Department of Finance have told the committee that there is no "windfall" as a result. They say citizens reduce their spending elsewhere to accommodate increased fuel costs. The committee is not convinced of this and notes that the total revenues for HST have increased each year, as has the volume of sale of petroleum products. This is consistent with the traditional view that petroleum is price-inelastic—the economists' phrase for a product that continues to be purchased in about the same amounts even if the price increases.

The chief argument in favour of a reduced provincial tax is that it could provide an immediate price break to consumers. Bolstering this is the view that there was an increase in the tax two years ago, and also that world market increases have generated a windfall of HST revenue.

On the other side, there is recognition that a reduction in the tax would result in a reduction in revenues for the province, and that in a province that remains dependent on federal government transfers for some 33 per cent of its revenues, it is not at all clear that this can be afforded. The committee also recognizes that it is recommending that this tax revenue be spent on transportation-related measures, including the promotion of alternatives to fossil fuels and of greater energy efficiency. There is also some concern that any tax room created by a reduction in tax may well be taken up by producers, wholesalers, and retailers, with no resultant benefit to customers. Finally, it is noted that all other G-7 nations (with the exception of the United States) have a much higher tax structure associated with petroleum products. These nations do so not only to generate revenues but also to help encourage increased energy efficiency.

There is overall agreement among the committee members that people on fixed incomes or in otherwise difficult financial circumstances may have ongoing problems affording home heating fuel and that it is truly an essential commodity in this part of the world. Two specific tax policies were discussed as possible ways of dealing with this dilemma. One was that the HST be removed from home heating fuel (though not from gasoline). The other was that, instead of an immediate tax reduction, there be a tax reduction only when the price of petroleum products reaches some set high level; no specific number was suggested for the trigger level.

In the end, despite ongoing discussion, the committee did not agree on any recommendation with respect to taxation.

Environmental issues:

The committee immediately recognized that it was not appropriate for it to deal with the issue of petroleum pricing in isolation. Members know that the use of fossil fuels has enormous impact on global issues such as climate change, and on local issues such as the planning of our communities. It is not too much to say that much of how we live our lives is designed around the availability of abundant energy, and that the particular standard of living we enjoy has consequences. This is not unrelated to price—or at least to the price that individuals and our society must pay for petroleum products—since one direct way to minimize the financial impact of an increase in price is to use less of the product.

Although this is sensible, there are limits on what individuals can accomplish in this regard unless systems are in place to make it easier for them to reduce energy use. In our climate, for example, it will always be necessary to heat buildings. Those buildings can be insulated, furnaces can be made more efficient, and consumers can shop more carefully for the best fuel deals, but some significant expenditure will still likely be necessary. This is equally true in transportation. Fuel-efficient vehicles can be used and indeed public transit can be used; but not all communities have adequate public transit and not all communities are planned in a way that makes energy use efficient.

The issues around energy efficiency and alternatives to fossil fuel dependency have been on the public policy agenda since at least the early 1970s when the first fuel price shock had its impact. Still, transformation of society with respect to energy issues is necessary and pressing.

The topic is a large one, and deserves to be the focus of more searching examination through special study of its own. Nonetheless, the committee does recommend:

- that the province review all of its buildings and its fleet with a view to promoting energy efficiency;
- that the province require municipalities and the greater public sector to do the same;
- that the province collaborate with municipalities to consider ways to require that land use planning be undertaken in a way to better promote energy efficiency (this might be approached through a new statement of provincial interest added to those under Schedule B to the Municipal Government Act);
- that the 2001 provincial Energy Strategy be revisited with a view to increasing the emphasis on reduction in fossil fuel energy use;
- that a portion of revenues from provincial fuel taxes, including the HST, be allocated to public transit initiatives, in excess of the present levels;
- that public transit initiatives include all regions of the province. In less-densely populated areas these initiatives could include shuttle services, especially those serving persons needing to travel for health-related purposes;
- that the province investigate ways to assist in the development of alternatives to existing fossil fuels, such as biodiesel;
- that the province investigate ways to support fuel-efficient vehicles, and energy-efficient buildings. Such steps could include tax incentives.

Social issues:

In addition to environmental considerations, the committee considered certain social issues. In particular, it was concerned about the survival of remote communities.

Members agreed that it was necessary for government to attempt to support the infrastructure of remote small communities. Places such as Canso are recognized as being in serious straits as a result of the impact on core activities like fishing, the migration of youth, and deteriorating surrounding roads. It is essential that these communities have services such as an operating school bus system, a volunteer fire department, as well as viable local businesses. This means these communities must also have a gasoline station reasonably nearby. Gasoline stations support tourism in those areas, as well as supporting the local population.

Although the committee believes that its main recommendation of retail divorcement may assist operators of gasoline stations in remote areas of the province it also recommends:

- that the province continue to monitor the economic and social health of small, remote communities;
- that the province seek ways to support the continued availability of necessary supplies of fuel in such communities.

Public input and communication:
The committee agrees that the issue of pricing of petroleum products is complex because it incorporates questions of international, national and regional policies affecting both corporate and personal futures. Members were disappointed in the lack of participation during public hearings by some of those directly affected by this debate, including those who might represent the interests and explain the costs of exploration, extraction and refining of product.

That having been said, the issue is one that has been of concern to the public for some years. The committee recognizes that the recommendations included in this report will be part of an ongoing process of debate on a serious subject. It encourages the full participation of citizens, all levels of government and affected parties in an ongoing debate of how best to ensure the fair and stable pricing of a product so critical to the lives of Nova Scotians.

Given that an all-party committee has now worked on these issues with some measure of success and has now development knowledge of the subject, members believe it would be appropriate for the Legislature to consider extending the committee's mandate through the initial implementation stages of any new system, if that could be of use.

Other Issues:
During its deliberations, the committee became aware of several issues that it has not focused on, but that it regards as appropriate for further investigation or monitoring. Members noted three issues in particular:

Emergency Preparedness
With the recent experience of Hurricane Juan in mind, and as a part of the focus of concern on the position of remote or rural communities in the province, the committee asked the provincial Emergency Measures Organization to comment on plans that might ensure the availability of petroleum products to vulnerable areas in the event of a general emergency.

The committee was told that "there is no formal process in place with producers to control the distribution of petroleum products during an emergency." Plans are being developed to identify critical services that would require priority delivery during an emergency.

The province already has legal authority to direct delivery of essential goods during an emergency. The committee's concern is with the extent of detailed planning and practical steps being taken in advance.

First Nations' Rights
There are currently 13 gasoline stations in Aboriginal communities in Nova Scotia that are owned and operated by the Mi'kmaq. The committee did not receive any complaints during public hearings regarding the existence or operation of any of these stations. Nor did members hear testimony from any Mi'kmaq interests.

The select committee understands that on-reserve stations are not required to charge or collect HST from customers who are aboriginal, but must collect from non-Mi'kmaq customers. Similarly, there is a fuel tax exemption for Mi'kmaq clients.

This system has potential for abuse if there is reselling or if the tax is not collected from customers who ought to pay it. This could, in turn, have significant competitive impact on other retail outlets.

The province has now moved to negotiate a control system that involves customers presenting a Nova Scotia driver's licence to a participating dealer to verify his or her tax-exempt status. Nova Scotia, the federal government and Mi'kmaq officials have also formed a formal framework for constitutional rights negotiations that committee members expect will extend to tax matters.

Fuel Tax Exemptions

Under existing provincial legislation, certain businesses and activities are either exempt from the payment of fuel tax or may apply for rebates. This involves what is usually referred to as “marked” gasoline, i.e., a product that has been treated with a dye for identification purposes.

Exemptions or rebates on the tax are available for farmers, fishers, foresters, municipalities, railways and some manufacturers.

GLOSSARY OF TERMS

ancillary revenue - Revenue from a retail outlet, which is other than from gasoline or diesel (such as convenience stores or car wash sales). Ancillary revenue helps to pay outlet and marketer operating costs, and is considered to contribute to lower petroleum margins. (www.mjervin.com/FuelFactsGuide.pdf)

contract price - The bulk rate paid at a city loading terminal, on the basis of a long term supply contract. This is usually lower than the rack price, and will differ from one wholesale customer to another. (www.mjervin.com/FuelFactsGuide.pdf)

downstream - General term for that part of the industry that refines crude oil into petroleum products and markets, distributes, and retails it to customers. (www.mjervin.com/FuelFactsGuide.pdf)

ex-tax pump price -The price a consumer pays at a retail outlet less the taxes.

integrated - A company engaged in more than one aspect of the oil industry. For example, an integrated refiner-marketer is involved in both the refining and marketing of petroleum products. (www.mjervin.com/FuelFactsGuide.pdf)

marketer - A company engaged in maintaining a network of retail outlets, usually associated with a common brand-name. Marketers buy product at a wholesale price, and either resell to individual dealers (see under "wholesale") or directly operate retail outlets. (www.mjervin.com/FuelFactsGuide.pdf)

margin - The price difference between related products and/or related markets (www.mjervin.com/FuelFactsGuide.pdf)

NYMEX - New York Mercantile Exchange. The NYMEX is a central point for trading future contracts for crude oil, gasoline, and other products (similar to other commodities sold on the futures markets such as sugar, coffee, beef, etc.). NYMEX prices serve as accurate reference prices of crude oil and wholesale gasoline in other North American markets, adjusted for transportation costs and quality differences. (www.mjervin.com/FuelFactsGuide.pdf)

OPEC - Organization of Petroleum Exporting Countries; includes many crude oil producing countries from the Middle East, Africa, Indonesia, and Venezuela. For several decades, OPEC has effectively controlled the price of world crude oil by means of agreeing upon member country crude oil production levels. (www.mjervin.com/FuelFactsGuide.pdf)

pump price - The price a consumer pays for gasoline at a service station, includes all taxes

rack price - The published bulk rate paid at a city loading terminal by a tanker-load buyer without a long-term supply contract.

refiner - A company engaged in purchasing and refining crude oil into manufactured petroleum products such as gasoline, diesel fuel, jet fuel, lubricating oils, etc. A refiner sells these products to its parent company's marketing division, or to other marketers. (www.mjervin.com/FuelFactsGuide.pdf)

retail divorcement - The legal separation of the companies responsible for refining petroleum products from the companies that retail petroleum products.

retail outlet - General term for a "gas station." Retail outlets may be owned and operated by individual dealers, or may be directly owned and operated by a petroleum marketer. In addition to selling gasoline, retail outlets typically offer a variety of other goods and services, such as convenience goods and car washes. (www.mjervin.com/FuelFactsGuide.pdf)

retail price/markets - The price of retail petroleum as it is purchased by the consumer at the pump, **also called pump price.** In Canada, this is the same price as is usually posted on pump price street signs, and invariably includes all taxes, including GST. (www.mjervin.com/FuelFactsGuide.pdf)

retail branded distributor - A wholesaler of refined petroleum, marketing primarily to a particular set of retail outlets.

soft energy path - An approach to energy policy that emphasizes "conservation in order to reduce energy demand to manageable levels that can be met by renewable, decentralized, ecologically sustainable energy sources (per R.Bott et al., Life After Oil. *A Renewable Energy Policy for Canada*, Hurtig, Edmonton, 1983, p.9)

spot price - The price for quite large quantities of product at a few key trading centres around the world. Although there are a variety of wholesale prices, the most often-quoted wholesale price is **rack price**, since it is publicly quoted, and easily available through several market price reporting services. Rack and spot prices serve as useful indicators of trends in other types of wholesale pricing activity. (www.mjervin.com/FuelFactsGuide.pdf)

taxes - Taxes on gasoline and diesel fuel include:
- federal excise tax;
- provincial tax; and
- HST (GST) of 15 per cent (8 per cent provincial share and 7 per cent federal share). All taxes are submitted to the province's declared revenue pool where the HST Revenue Allocation Formula is applied. Nova Scotia is then rebated 2.759 per cent of the entire pool minus federal and provincial rebates.

upstream - General term for that aspect of the oil industry which is engaged in the exploration for crude oil (or natural gas) and for drilling and production of these raw materials. (www.mjervin.com/FuelFactsGuide.pdf)

wholesale price/markets - Wholesale is a generic term for sales of goods to retailers for eventual sale to the consumer.(www.mjervin.com/FuelFactsGuide.pdf)

DATE: May 13, 2004

RESOLUTION # 1676

INTRODUCED BY: Barry Barnet
Minister of Service Nova Scotia and Municipal Relations

MR. SPEAKER: The honourable Minister of Service Nova Scotia and Municipal Relations.

HON. BARRY BARNET: Mr. Speaker, I hereby give notice that on a future day I shall move the adoption of the following resolution:

WHEREAS a Select Committee on Petroleum Product Pricing is to be formed based on equal representation from each party;

THEREFORE BE IT RESOLVED THAT:

- this House declare that a Select Committee on Petroleum Product Pricing be established; and

- this House declare that the select committee be composed of such members as the striking committee shall determine, an equal number of whom shall be members of the government Party, an equal number of whom shall be members of the Official Opposition and an equal number of whom shall be members of the Third Party in the House and the Government House Leader shall designate one of the members of the select committee as chairman; and

- the mandate of the select committee is to examine petroleum product markets and current factors that determine existing prices with the intent to make a determination whether current prices are justified. This examination is to include but not be limited

- to the following issues: the reason for the current level of produce prices; product supply; reasons for volatility in product prices; the rationale for differences in prices across different regions of the province; factors that affect the viability of low-volume outlets in the rural and urban marketplace; factors that affect the viability of independent retail operators in the province; and, any evidence of predatory pricing practices at the wholesale and retail levels of the market. The select committee is to make recommendations related to what it deems are just and reasonable product prices at the consumer level and in terms of retail and wholesale margins, and any other actions it determines may be required to correct imbalances in the distribution and sales of these products to consumers in the province; and

- if this House is not sitting when the final report is completed by the select committee, the select committee shall table the report with the Clerk of the House by August 31, 2004; and

- the House declares, pursuant to Section 36 of the House of Assembly Act, that the committee shall not be dissolved by prorogation of the House and the select committee is authorized to continue its enquiry after the House is prorogued; and

- that all powers and privileges of the House of Assembly Act applicable to committees apply and are in full force and effect during the sittings of the select committee; and

- the House requests the Legislature's Internal Economy Board, on behalf of the select committee, to employ such members and staff as may be necessary to enable the select committee to carry out its duties; and

- the House requests the Legislature's Internal Economy Board to provide the select committee, its members and its staff, with such facilities and funds as are required to carry out its functions as provided for by Section 80 of the Public Service Act.

Mr. Speaker, I request waiver of notice.

MR. SPEAKER: There has been a request for waiver.

Is it agreed?

It is agreed.

Would all those in favour of the motion please say Aye.

Contrary minded, Nay.

The motion is carried. (Applause)

Legislative
Committees Office
House of Assembly
Nova Scotia

3rd Floor, Dennis Building
1740 Granville Street
PO Box 2630, Station M
Halifax, Nova Scotia
B3J 3N5

Mr. Roderick MacArthur
Chief Clerk of the House
House of Assembly
Province House
Halifax, Nova Scotia

Tuesday, August 31, 2004

Dear Mr. MacArthur,

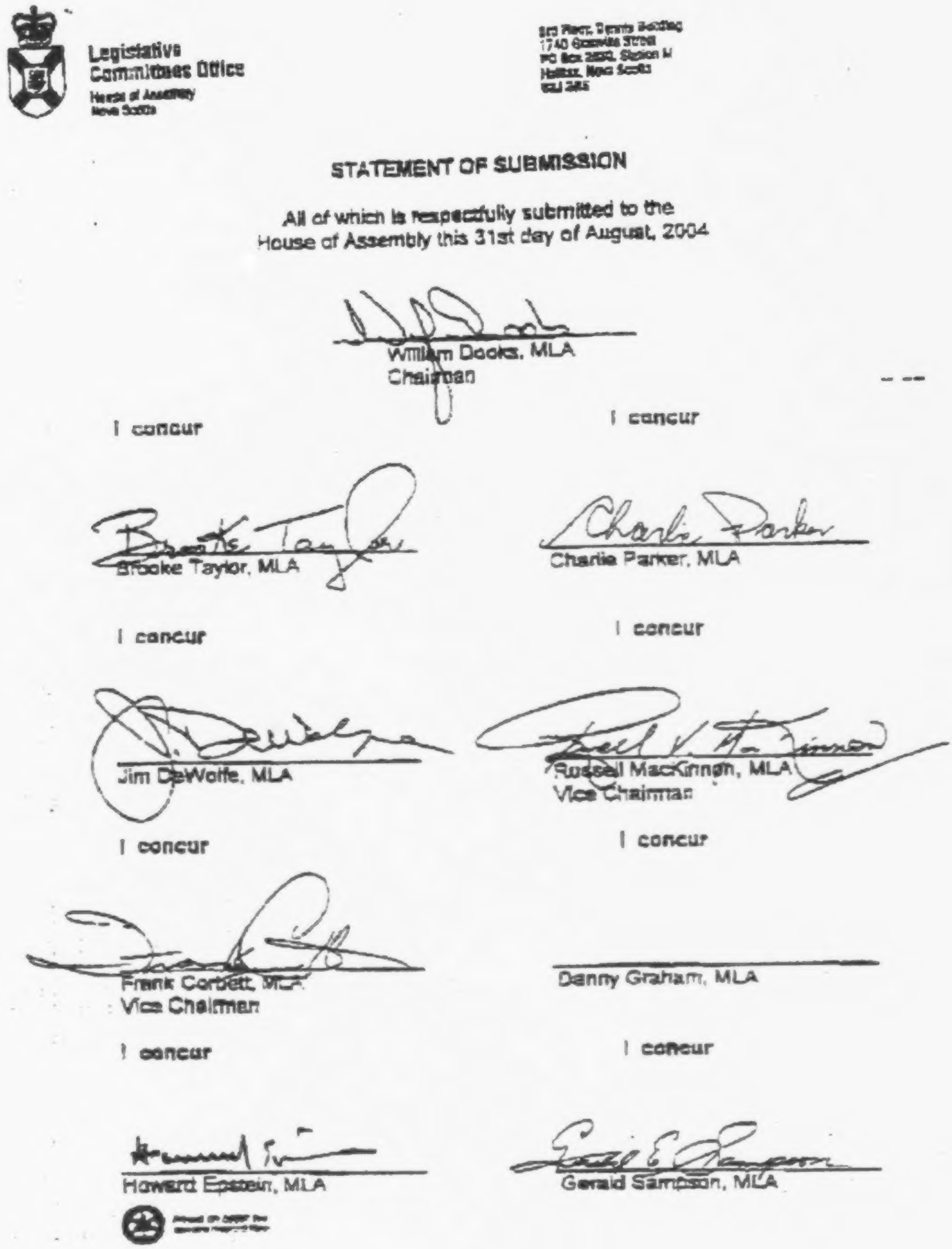
In accordance with Resolution 1676, passed by the House of Assembly on May 13, 2004, the Select Committee on Petroleum Product Pricing is pleased to submit this report for the favourable consideration of the Legislative Assembly of Nova Scotia.

Respectfully Submitted,

William Dooks, MLA
(Eastern Shore)
Chairman
Select Committee on Petroleum Product Pricing

Halifax, Nova Scotia
August 2004

Printed on paper that contains recycled fibre



Legislative Committees Office
House of Assembly
Nova Scotia

3rd Floor, Dennis Building
1740 Granville Street
PO Box 2630, Station M
Halifax, Nova Scotia
B3J 2K5

STATEMENT OF SUBMISSION

All of which is respectfully submitted to the
House of Assembly this 31st day of August, 2004

William Dooks, MLA
Chairman

I concur

Brooke Taylor, MLA

I concur

Charlie Parker, MLA

I concur

Jim DeWolfe, MLA

I concur

Russell MacKinnon, MLA
Vice Chairman

I concur

Frank Corbett, MLA
Vice Chairman

I concur

Danny Graham, MLA

I concur

Howard Epstein, MLA

I concur

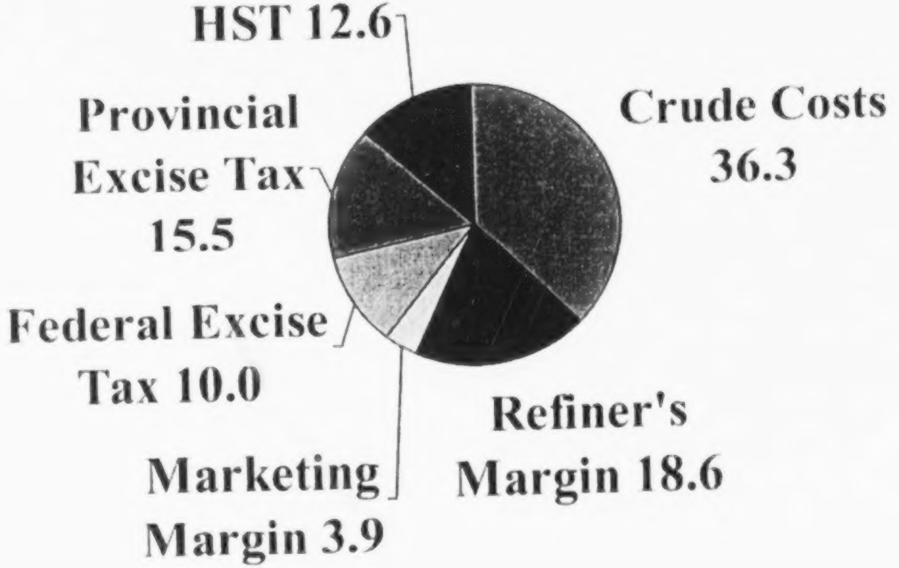
Gerald Sampson, MLA

APPENDIX A

Break Down of Pump Prices for Regular Self-Serve Gasoline May 18, June 15, July 13, and August 24, 2004

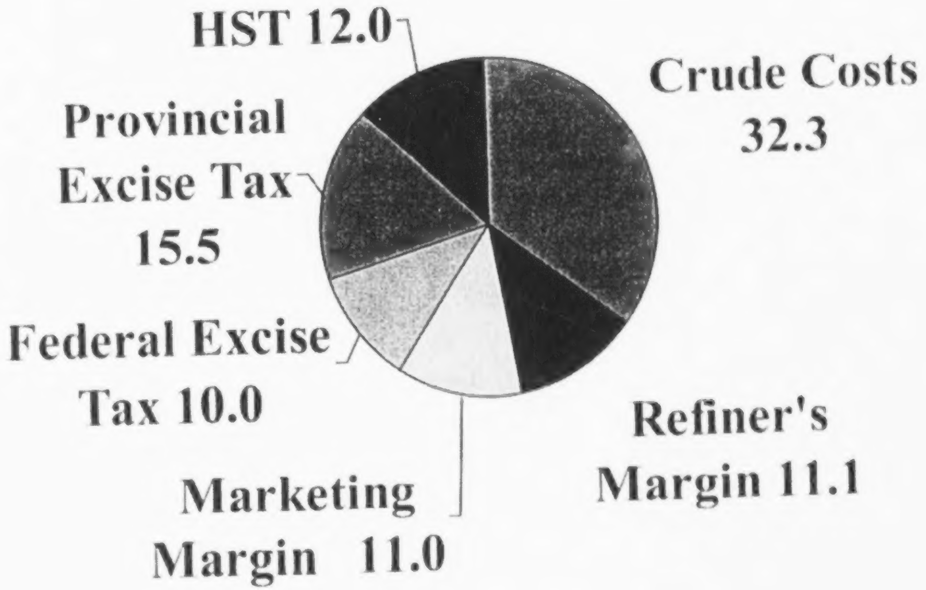
Submitted by the Department of Energy
Source: M.J. Ervin & Associates and WTI spot price data.

Break Down of Pump Prices for Regular Self-Serve Gasoline
May 18, 2004 - 96.9 cents per litre



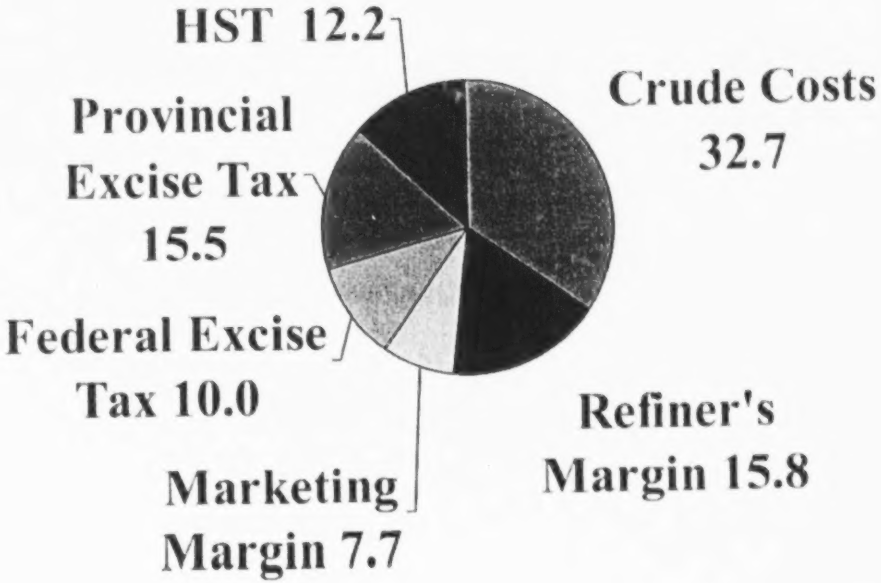
Prepared by the Department of Energy using M.J. Ervin & Associates' figures .along with WTI spot price data.

Break Down of Pump Prices for Regular Self-Serve Gasoline
June 15, 2004 – 91.9 cents per litre



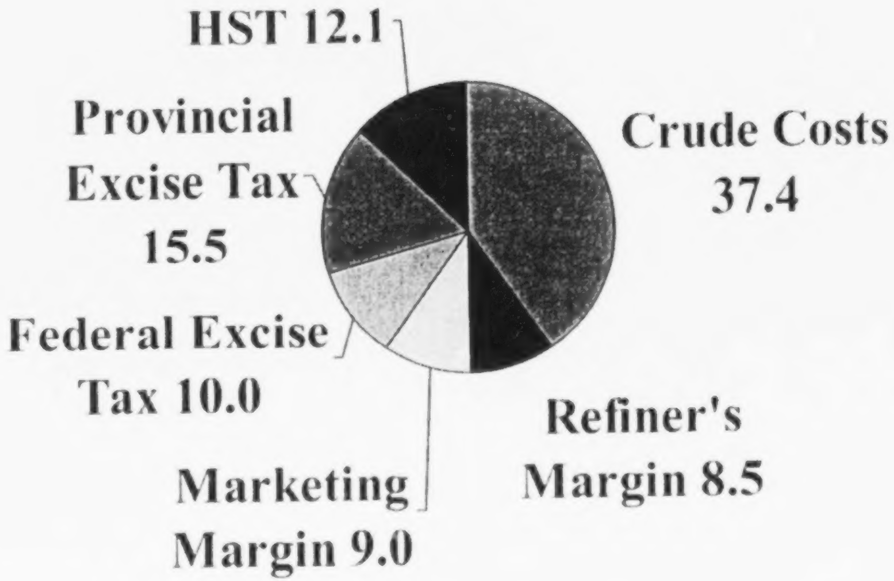
Prepared by the Department of Energy using M.J. Ervin & Associates' figures .along with WTI spot price data.

Break Down of Pump Prices for Regular Self-Serve Gasoline
July 13, 2004 – 93.9 cents per litre



Prepared by the Department of Energy using M.J. Ervin & Associates' figures .along with WTI spot price data.

Break Down of Pump Prices for Regular Self-Serve Gasoline
August 24, 2004 – 92.5 cents per litre



Prepared by the Department of Energy using M.J. Ervin & Associates' figures .along with WTI spot price data.

APPENDIX B

News Articles

- C. Catanneo, "Oil fear factor hits $1.6 B daily," Financial Post, Aug 5, 2004.
- J. Aversa, "Food and gasoline fuel U.S. inflation increase," Globe & Mail, ROB, June 16, 2004.
- D. Smith, "Over the barrel," Sunday Times (UK) [May 23, 2004].
- P. Brethour, D. Ebner, "The crude oil roller-coaster ride continues," Globe and Mail, Monday, August 6, 2004, B8.
- A. Seager, "Oil threat to world economy," The Guardian, Thursday, August 5, 2004.
- P. Krugman, "A Crude Shock," The New York Times, Friday, May 14, 2004.

NATIONAL POST

Oil fear factor hits $1.6B daily: War on terror's premium of US$15 a barrel called threat to global economies

National Post
Thursday, August 5, 2004
Page: FP1 / FRONT
Section: Financial Post
Byline: Claudia Cattaneo, Calgary Bureau Chief
Dateline: CALGARY
Source: Financial Post

CALGARY - The United States war on terror and other fears are taxing world economies to the tune of more than $1.6-billion (US$1.2-billion) a day in excessive oil costs, says Wall Street investment firm Oppenheimer & Co. Inc.

The fear premium on the price of crude oil has now widened to US$15 a barrel and adds up to US$1.2-billion a day based on current world oil consumption of 82 million barrels a day, Fadel Gheit, a senior energy analyst, warns in a report yesterday.

He said it's unlikely the premium will disappear any time soon. In fact, Mr. Gheit said oil could be on its way to US$50 a barrel.

"In a psychologically charged market that we are in now -- and we have been in it for almost two years -- people do not look at the facts," Mr. Gheit said in an interview. "They act on emotions and perceptions and that is exactly what is driving the market today."

The report pins a lot of the blame for higher crude prices on the war on terror.

"Increased terrorist threats, well publicized by United States government officials, have been pushing oil prices closer to US$50 a barrel and many now believe that US$30 oil is a thing of the past," he writes.

Fears of supply disruptions are also to blame. Last week, crude prices jumped on concerns that Russia's biggest oil company, Yukos, might cut oil output from its main Siberian unit over a tax dispute with the Kremlin. Other hot spots being watched for potential supply disruptions include Iraq, Nigeria, Venezuela and particularly Saudi Arabia.

The firm predicts the excessive costs will reverse world economic growth and fuel inflation, while crude prices will be brought down by lower demand and increased supply.

"Oil prices have historically gone through cycles where booms are followed by busts and, in our view, the current cycle is likely to be no different."

While many crude market analysts say crude prices are raised by higher demand in such places as China, India and the United States, Mr. Gheit said demand is a "minor player" in the crude price run up and does not justify prices rising from US$26 a barrel last year to the levels they are at today.

He notes crude has traded above US$40 in the past three weeks despite indications demand is cooling off.

Crude prices, which climbed as high as US$44.34 a barrel this week, closed US$1.32 lower at US$42.83 a barrel yesterday after Yukos said it was given access to money needed to fund operations. And the Organization of Petroleum Exporting Countries (OPEC) said it was concerned about high prices and willing to use its 1.5 million barrels of spare capacity.

The report says the threat of terrorism has also boosted OPEC costs.

While the cartel can produce oil at less than US$5 a barrel, members are having to implement tighter security measures that include an additional US$4 a barrel for military escorts to oil tankers leaving the Persian Gulf.

"This added cost is unlikely to disappear in the near future given increased terrorist threats," the report says.

The higher costs have raised the minimum price OPEC is willing to accept for its oil to US$20 a barrel, which is also the minimum price required by Western oil companies to generate acceptable investment returns, the report says.

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Edition: National
Story Type: Business
Note: ccattaneo@nationalpost.com See related story "Profits pinched by expensive oil" by James Boxell on page IN1.
Length: 559 words
Keywords: OIL; PRICES; PRODUCTION; QUOTAS

ECONOMICS

Food and gasoline fuel U.S. inflation increase

Largest rise in more than three years will probably provoke Fed interest rate hike

BY JEANNINE AVERSA, WASHINGTON

Consumer prices — stoked by rising energy and food products — registered their largest increase in more than three years last month.

The Labour Department reported yesterday that the consumer price index, the government's most closely watched inflation gauge, climbed 0.6 per cent last month, after a 0.2-per-cent rise in April.

The increase posted in May was slightly larger than the 0.5-per-cent advance that some economists were expecting, and represented the largest gain since January, 2001. Energy prices rose by the largest amount since the beginning of this year and food costs had their biggest increase in more than 14 years.

While there's no doubt that higher gasoline and food prices are hitting the pocketbooks and wallets of consumers, the prices of other goods and services were more restrained. The core rate of inflation, which excludes volatile energy and food prices, rose by only 0.2 per cent in May — matching economists' forecasts. That was down from a 0.3-per-cent rise in April.

Asked about inflation yesterday, U.S. President George W. Bush said he was optimistic about future business prospects.

"I guess if you want to find something to be pessimistic about, you can find it," he said. "[But] we've overcome a lot," he said. "Not only are we strong today, we are getting stronger. Our economy is the strongest of any major industrialized country in the world."

Nonetheless, the latest snapshot of the U.S. inflation climate would justify a move by the Federal Reserve Board to raise rates for the first time in four years when it meets June 29-30, economists said.

"This confirms the expectation that the Fed will tighten policy," said Mark Zandi, chief economist at Economy.com.

Some companies are finding it easier to raise prices now that the economy is strengthening — something they found hard to do during the economic slump.

Federal Reserve chairman Alan Greenspan told an international monetary conference last week that the Fed probably can boost rates gradually to head off inflation, but he wouldn't rule out more aggressive action.

With the economy on a solid growth track and inflation moving higher, economists widely expect the Fed to boost interest rates this month for the first time in four years. Mr. Zandi and many other economists expect a one-quarter-percentage-point increase. A few are predicting a half-point move.

For nearly a year, a key short-term interest rate used by the Fed to influence economic activity has been at 1 per cent, a 46-year low.

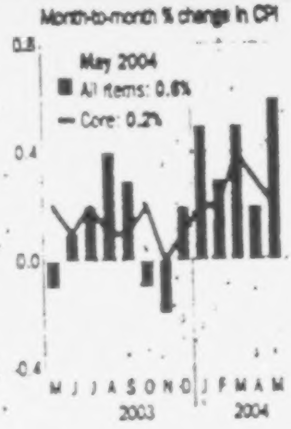
Analysts don't believe inflation threatens the current recovery, but the upward pressure marks a big change in the pricing climate from a year ago. The Fed then was worried about the prospects of deflation, which is a prolonged and widespread price decline.

In May, energy prices led the advance in the overall CPI, rising 4.6 per cent, the largest gain since January and a big pickup from the tiny 0.1-per-cent rise in April. Gasoline prices last month shot up 8.1 per cent, fuel oil prices went up 3.5 per cent, natural gas prices increased 1.2 per cent and electricity prices rose 1.1 per cent.

Food prices in May jumped 0.9 per cent, the biggest gain since January, 1990, and up from a 0.2-per-cent rise in April. Analysts say more expensive transportation costs because of higher fuel prices is a factor in the food price increases.

Associated Press

U.S. inflation



SOURCE: THOMSON DATASTREAM

Globe & Mail, ROB, June 16, 2004

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Oil threat to world economy

Ashley Seager
Thursday August 5, 2004
The Guardian

Fears that the world economy could be derailed by higher energy costs intensified last night after the price of oil set fresh records on both sides of the Atlantic.

With petrol prices set to reach record levels within days, the chancellor, Gordon Brown, was said to be monitoring the situation from his holiday in Scotland. Oil cartel Opec last night tried to soothe the market, saying it could - and would - pump more oil.

Brent futures leapt 35 cents to $40.99 (£22.50) a barrel, outstripping the previous high of $40.95 set in 1990 in the runup to the Gulf war. In New York, US light crude prices set a record of $44.30 a barrel, the highest in 21 years of the New York Mercantile Exchange. Both contracts subsequently slipped back, but few analysts expect this to be the peak, with some saying that $50 oil is a possibility.

Motoring organisations reacted swiftly, warning of big price rises at the pumps.

"That is some move. This is markets in mid-summer madness mood. If oil prices stay at these levels, we could potentially see another 4p-5p on a litre very soon. It does not look good," said Ray Holloway of the Petrol Retailers Association.

Petrol prices have risen from about 75p a litre at the start of the year to about 82p now. When the latest oil price rise feeds through to the pumps in a week or so, petrol will cost more than 85p, the price that prompted the fuel protests of September 2000. Although oil prices have risen by a third this year, petrol prices have risen far less sharply because about 85% of the pump price is accounted for by tax and only about 15% by oil prices.

Treasury officials said Mr Brown remained concerned that enough oil be pumped to meet record world demand.

"With the UK and world economy strengthening, we must continue to be vigilant to the risks. It is important for the world economy that we maintain the pressure on all oil producing nations to take the action required to reduce prices to a sustainable level," said a Treasury spokesman.

Last month, Mr Brown postponed a 1.42p rise in petrol duty originally scheduled for September, saying he would review it in his pre-budget report in November or December. The spokesman said that remained his position.

The German finance minister, Hans Eichel, said he, too, was concerned about high oil prices. "It could slow world economic growth," he said.

Purnomo Yusgiantoro, the president of Opec, who had sparked price rises on Tuesday by saying the cartel could not pump more oil, tried to calm the market yesterday by saying that it could pump another 1m-1.5m barrels a day within weeks.

But, despite Opec's reassurance, the Freight Transport Association called on Mr Brown to cut fuel duties on diesel to help truckers through a difficult period.

Prices have been driven higher each day of the past week, first as Russian oil giant Yukos said it faced bankruptcy and might have to cease pumping oil, then as the US announced a terror alert and, finally, by an attack on an Iraqi oil pipeline.

Economists have calculated that a $10 a barrel rise in oil prices knocks about 0.5 percentage points off world growth after 12 to 18 months. Brent has averaged around $25 a barrel in recent years, so a sustained price above $40 could knock the world economy hard.

"Oil prices matter enormously for the world economy and will continue to do so for at least our lifetimes," said Andrew Oswald, professor of economics at Warwick University.

"A $15 a barrel rise, such as we have seen, will add one percentage point to unemployment in the US, for example."

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Leader: Oil riches must benefit Africa too

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Leader: Energy

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Shell's shame: FSA spells out abuse

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Fears that oil could hit $60

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Tuesday, August 03, 2004

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Published on Friday, May 14, 2004 by the New York Times

A Crude Shock

by Paul Krugman

So far, the current world oil crunch doesn't look at all like the crises of 1973 or 1979. That's why it's so scary.

The oil crises of the 1970's began with big supply disruptions: the Arab oil embargo after the 1973 Israeli-Arab war and the 1979 Iranian revolution. This time, despite the chaos in Iraq, nothing comparable has happened — yet. Nonetheless, because of rising demand that is led by soaring Chinese consumption, the world oil market is already stretched tight as a drum, and crude oil prices are $12 a barrel higher than they were a year ago. What if something really does go wrong?

Let me put it a bit differently: the last time oil prices were this high, on the eve of the 1991 gulf war, there was a lot of spare capacity in the world, so there was room to cope with a major supply disruption if it happened. This time there isn't.

The International Energy Agency estimates the world's spare oil production capacity at about 2.5 million barrels per day, almost all of it in the Persian Gulf region. It also predicts that global oil demand in 2004 will be, on average, 2 million barrels per day higher than in 2003. Now imagine what will happen if there are more successful insurgent attacks on Iraqi pipelines, or, perish the thought, instability in Saudi Arabia. In fact, even without a supply disruption, it's hard to see where the oil will come from to meet the growing demand.

But wait: basic economics says that markets deal handily with excesses of demand over supply. Prices rise, producers have an incentive to produce more while consumers have an incentive to consume less, and the market comes back into balance. Won't that happen with oil?

Yes, it will. The question is how long it will take, and how high prices will go in the meantime.

To see the problem, think about gasoline. Sustained high gasoline prices lead to more fuel-efficient cars: by 1990 the average American vehicle got 40 percent more miles per gallon than in 1973. But replacing old cars with new takes years. In their initial response to a shortfall in the gasoline supply, people must save gas by driving less, something they do only in the face of very, very high prices. So very, very high prices are what we'll get.

Increasing production capacity takes even longer than replacing old cars. Also, major new discoveries of oil have become increasingly rare (although in my last column on the subject, I forgot about two large fields in Kazakhstan, one discovered in 1979, the second in 2000).

Petroleum engineers continue to squeeze more oil out of known fields, but a repeat of the post-1973 experience, in which there was a big increase in non-OPEC production, seems unlikely.

So oil prices will stay high, and may go higher even in the absence of more bad news from the Middle East. And with more bad news, we'll be looking at a real crisis — one that could do a lot of economic damage. Each $10 per barrel increase in crude prices is like a $70 billion tax increase on American consumers, levied through inflation. The spurt in producer prices last month was a taste of what will happen if prices stay high. By the way, after the 1979 Iranian revolution world prices went to about $60 per barrel in today's prices.

Could an oil shock actually lead to 1970's-style stagflation — a combination of inflation and rising unemployment? Well, there are several comfort factors, reasons we're less vulnerable now than a generation ago. Despite the rise of the S.U.V., the U.S. consumes only about half as much oil per dollar of real G.D.P. as it did in 1973. Also, in the 1970's the economy was already primed for inflation: given the prevalence of cost-of-living adjustments in labor contracts and the experience of past inflation, oil price increases rapidly fed into a wage-price spiral. That's less likely to happen today.

Still, if there is a major supply disruption, the world will have to get by with less oil, and the only way that can happen in the short run is if there is a world economic slowdown. An oil-driven recession does not look at all far-fetched.

It is, all in all, an awkward time to be pursuing a foreign policy that promises a radical transformation of the Middle East — let alone to be botching the job so completely.

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APPENDIX C

Gasoline Price Components 1991- 2004

Submitted by Service Nova Scotia and Municipal Relations
Source: M.J. Ervin and Associates

Gasoline Price Components 1991 - 2004
(cents per litre)

HALIFAX (Average)	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004 June**	**Average 2000 - 04**
Crude Cost	14.7	14.8	14.0	13.7	15.2	18.4	17.6	12.7	17.2	27.9	24.6	25.2	27.3	30.4	27.1
Refiner Margin	11.1	7.5	6.9	6.8	7.1	5.5	6.6	6.0	6.2	8.3	8.2	7.0	8.5	12.4	8.9
Marketing Margin	11.3	11.5	6.9	6.4	5.2	3.8	6.0	7.4	6.2	6.6	7.0	6.6	6.2	6.4	6.6
Total Ex Tax Price	**37.1**	**33.8**	**27.8**	**27.0**	**27.5**	**27.6**	**30.1**	**26.1**	**29.6**	**42.8**	**39.8**	**38.8**	**41.9**	**49.2**	**42.5**
Taxes	25.5	24.8	23.5	25.0	26.8	27.1	30.4	30.9	31.5	33.4	33.0	34.6	35.6	36.7	34.7
Total Price	**62.6**	**58.6**	**51.3**	**52.0**	**54.3**	**54.7**	**60.5**	**57.0**	**61.1**	**76.2**	**72.8**	**73.4**	**77.5**	**85.8**	**77.1**

CHARLOTTETOWN (Average)	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004 June**	**Average 2000 - 04**
Crude Cost	14.7	14.8	14.0	13.7	15.2	18.4	17.6	12.7	17.2	27.9	24.6	25.2	27.3	30.4	27.1
Refiner Margin	11.1	7.5	6.9	6.8	7.1	5.5	6.6	6.0	6.2	8.3	8.2	7.0	8.5	12.4	8.9
Marketing Margin	12.6	14.1	12.1	10.7	11.2	9.3	10.5	8.5	3.3	6.5	11.7	7.7	9.1	6.7	8.3
Total Ex Tax Price	**38.4**	**36.4**	**33.1**	**31.2**	**33.5**	**33.2**	**34.6**	**27.2**	**26.7**	**42.7**	**44.5**	**40.0**	**44.9**	**49.5**	**44.3**
Taxes	24.9	24.1	23.4	23.7	25.7	25.9	26.0	26.3	26.5	27.2	27.8	28.2	28.8	30.8	28.6
Total Price	**63.4**	**60.6**	**56.5**	**54.9**	**59.2**	**59.1**	**60.6**	**53.5**	**53.2**	**69.9**	**72.3**	**68.2**	**73.7**	**80.2**	**72.9**

HALIFAX VERSUS CHARLOTTETOWN EX TAX	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**June 2004**	**Average 2000 - 04**
( ) indicate Halifax prices below the Charlottetown avg.	**(1.3)**	**(2.6)**	**(5.3)**	**(4.2)**	**(6.0)**	**(5.6)**	**(3.5)**	**(1.1)**	**2.9**	**0.1**	**(4.7)**	**(1.2)**	**(3.0)**	**(0.3)**	**(1.8)**

CANADA (10 City Average)	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004 June**	**Average 2000 - 04**
Crude Cost	14.7	14.8	14.0	13.7	15.2	18.4	17.6	12.7	17.2	27.9	24.6	25.2	27.3	30.4	27.1
Refiner Margin	10.9	7.4	7.5	6.9	6.7	5.9	7.2	6.7	6.6	8.5	9.7	8.9	10.4	13.9	10.3
Marketing Margin	7.0	6.4	6.0	5.4	4.5	3.9	4.3	4.4	4.7	4.8	4.4	4.5	4.4	4.2	4.5
Total Ex Tax Price	**32.6**	**28.6**	**27.5**	**26.0**	**26.4**	**28.2**	**29.1**	**23.8**	**28.5**	**41.2**	**38.8**	**38.6**	**42.1**	**48.5**	**41.8**
Taxes	24.7	25.9	26.1	26.2	27.8	28.6	28.9	28.6	29.1	30.2	30.0	30.2	31.1	31.8	30.7
Total Price	**57.4**	**54.5**	**53.6**	**52.3**	**54.1**	**56.8**	**58.0**	**52.4**	**57.6**	**71.4**	**68.8**	**68.8**	**73.2**	**80.3**	**72.5**

Source: M. J. Ervin data
Note: Figures may not add due to rounding.
/ajj
July 22/04

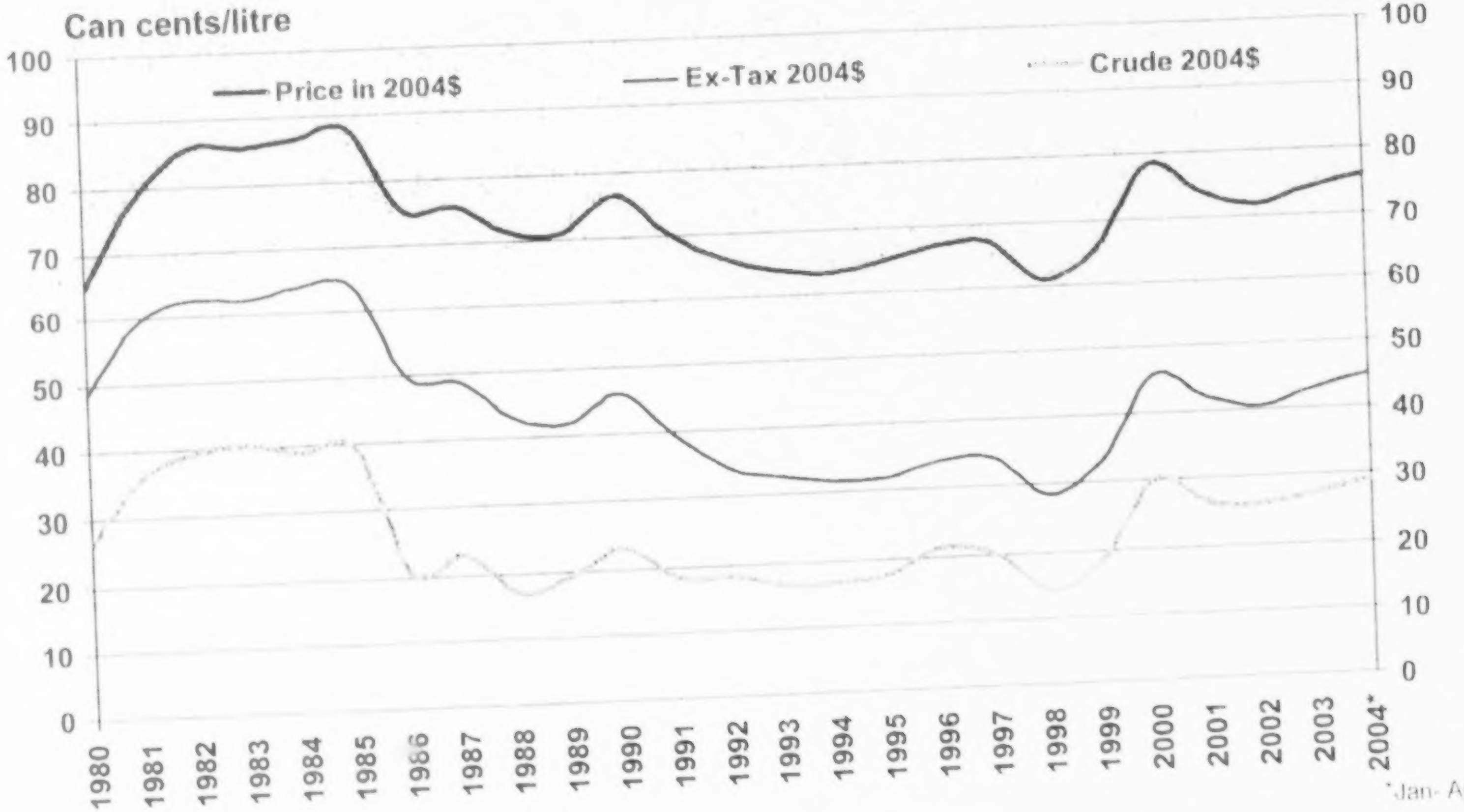
APPENDIX D

- Regular Gasoline Prices in Canada (in 2004)
- Regular Gasoline Pump Price Components – Canada Average (1992-2004)
- International Gasoline Prices – April 2004
- Refiner Margins *(Estimated Crude Price minus Canadian Average Rack Prices)*

Submitted by Natural Resources Canada, Energy Resources Branch – Oil Division, June 2004

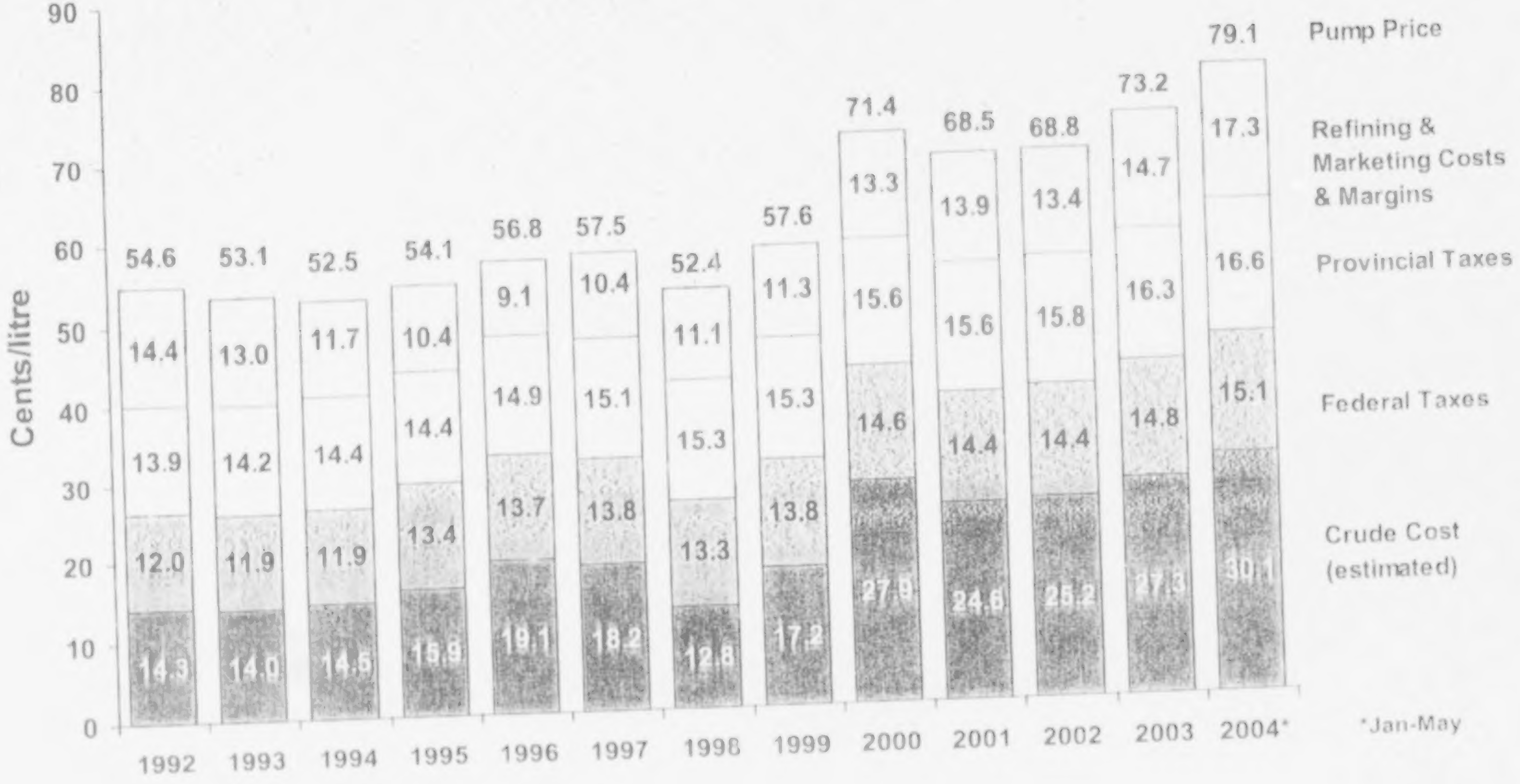
Regular Gasoline Prices in Canada

(in 2004$)



*Jan- Apr

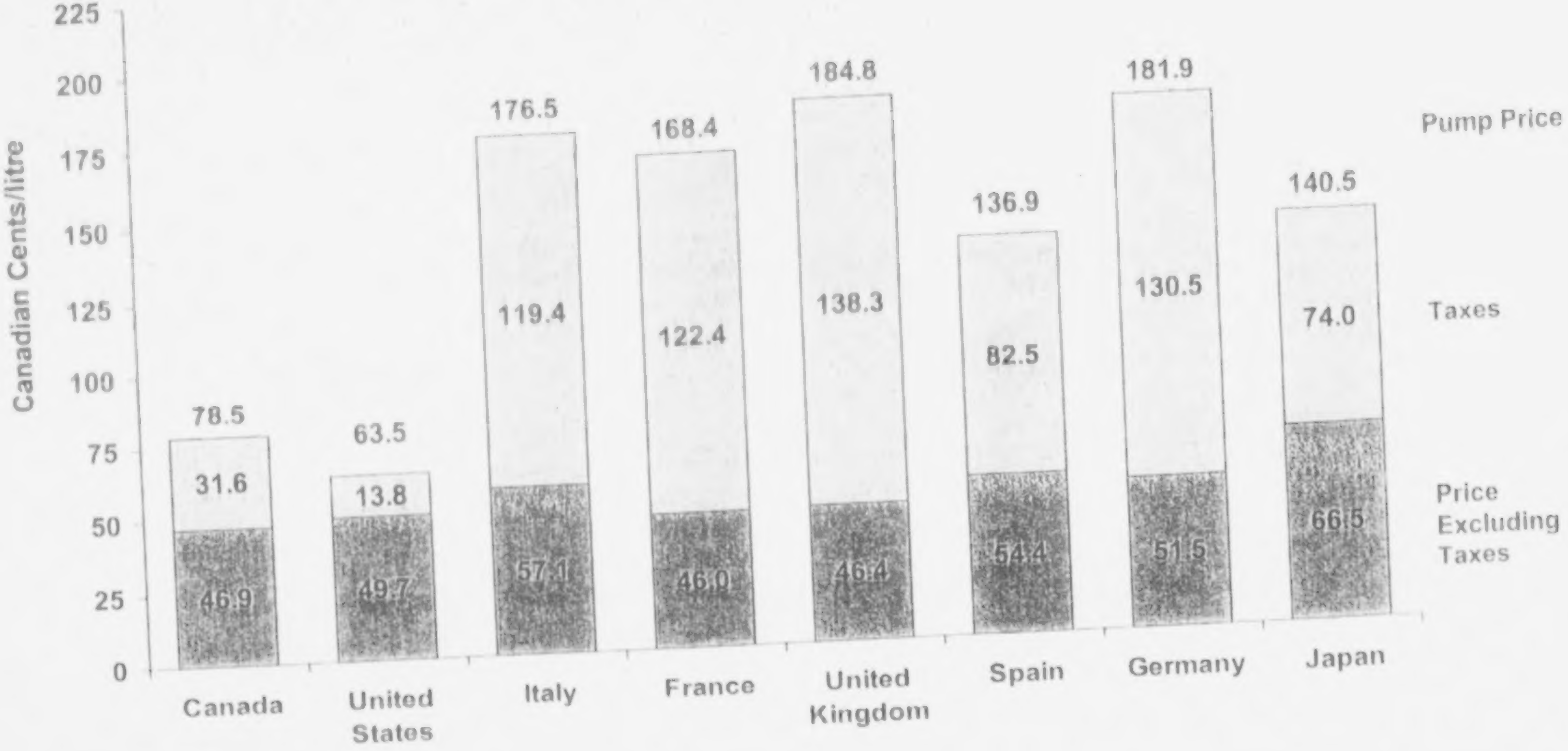
Regular Gasoline Pump Price Components
Canada Average



Source: 1992-97, NRCan
1999-2003 MJ Ervin & Ass

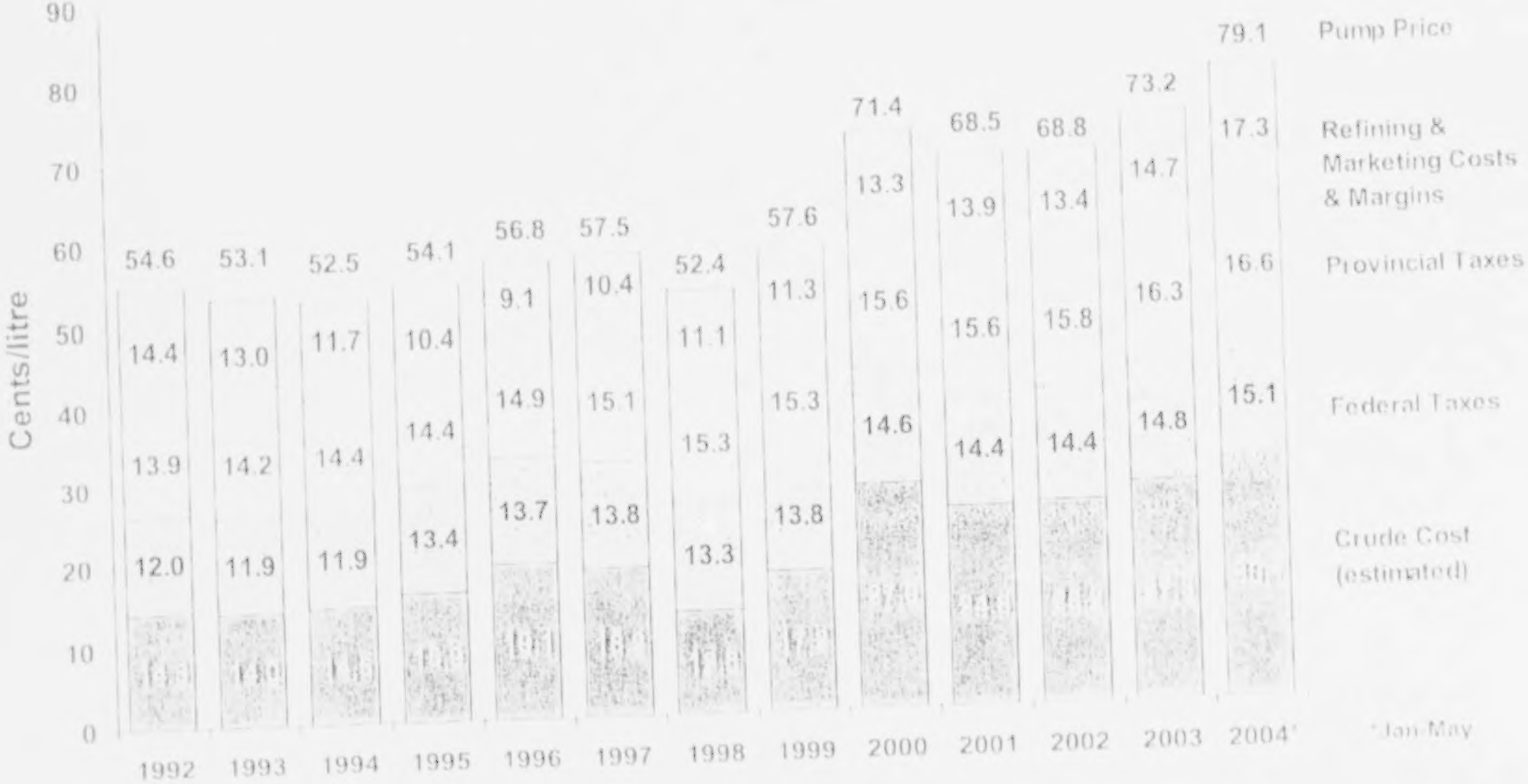
International Gasoline Prices

April 2004



Source: IEA, MJ Ervin & Ass

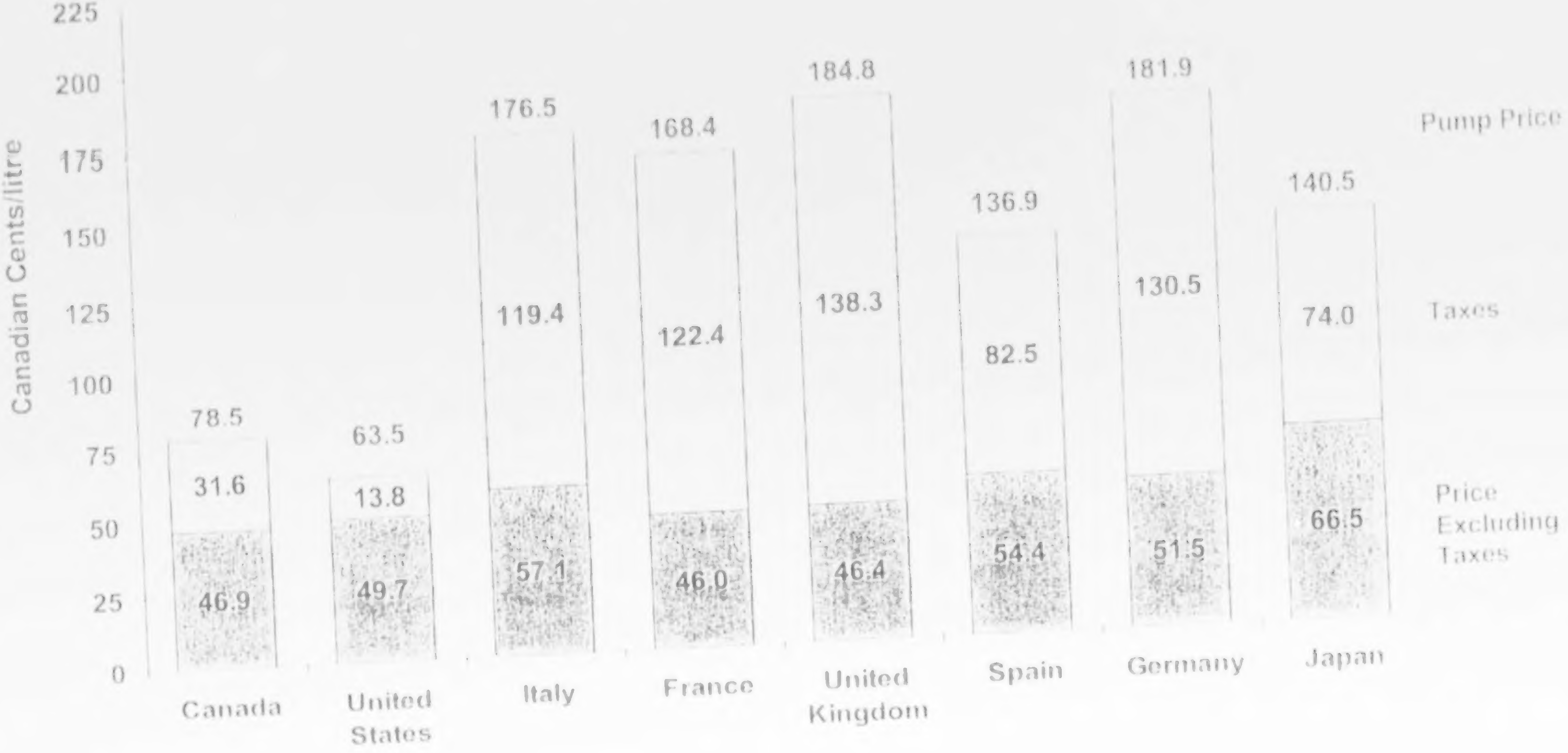
Regular Gasoline Pump Price Components
Canada Average



Source: 1992-97, NRCan
1999-2003 MJ Ervin & Ass

International Gasoline Prices

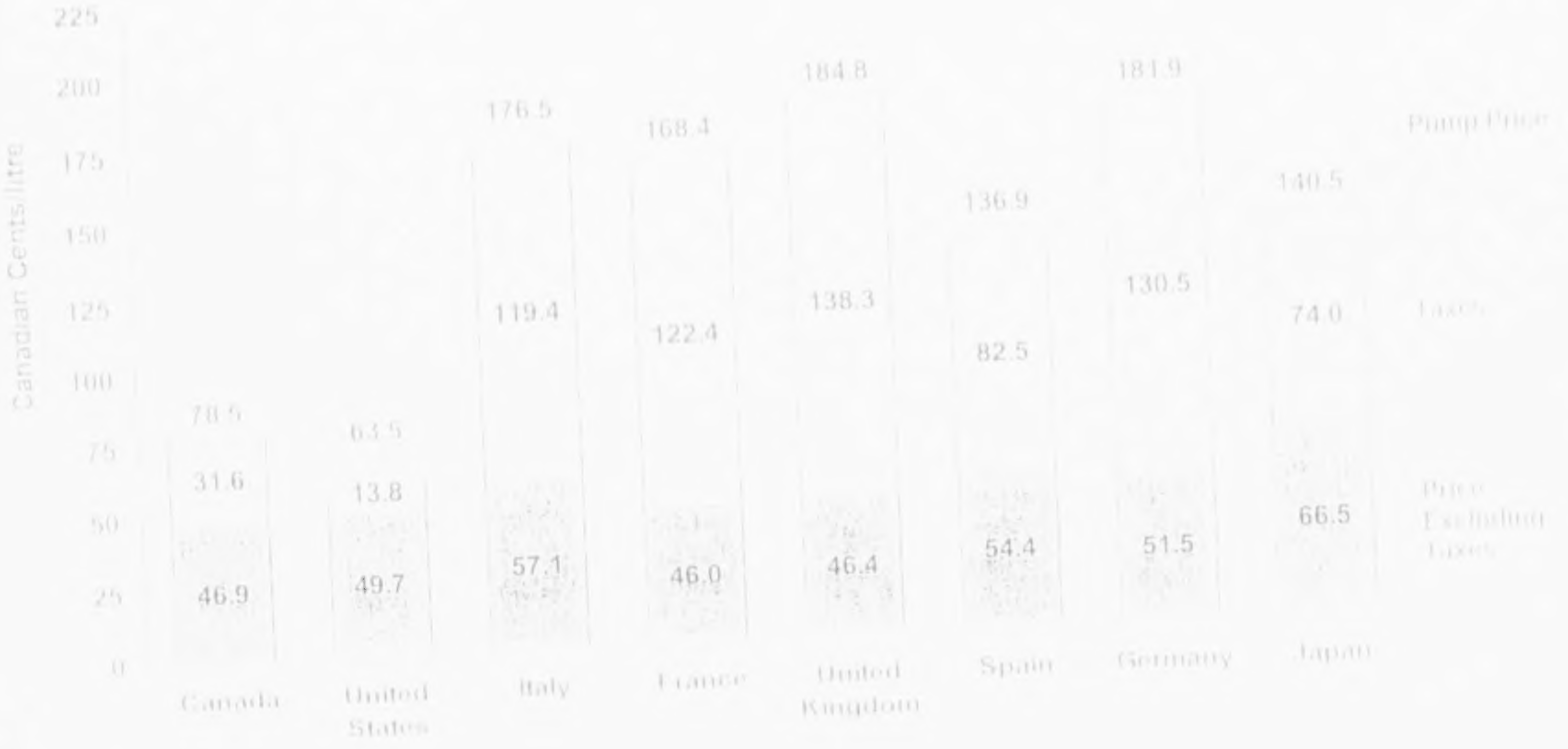
April 2004



Source: IEA, MJ Ervin & Ass

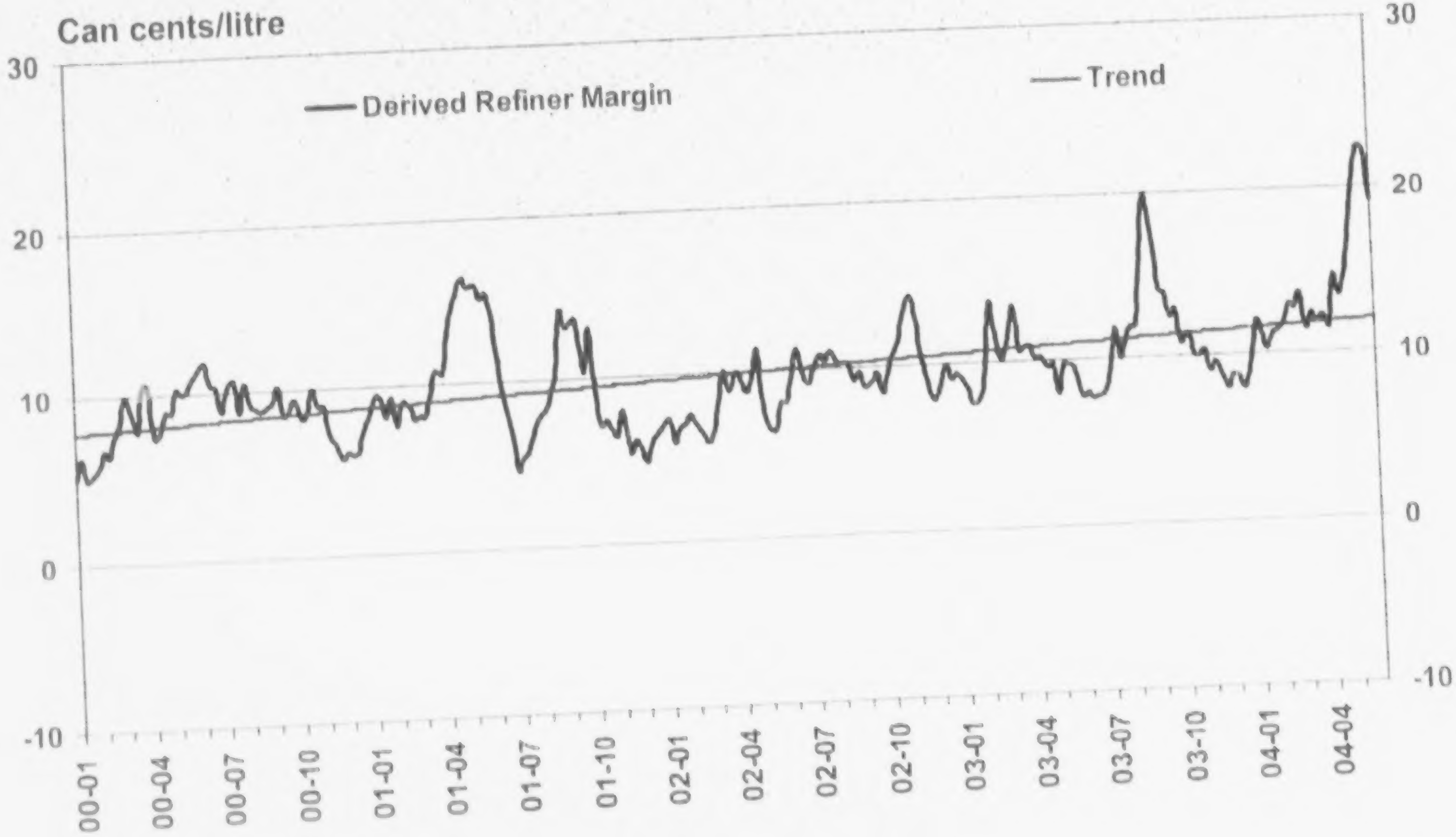
International Gasoline Prices

April 2004



Refiner Margins

(Estimated Crude Price minus Canadian Average Rack Price)



APPENDIX E

High Fuel Efficiency Vehicles

Submitted by Barry Wiser, Psychologist, Yarmouth Presenter
Source: Natural Resources Canada – Personal Vehicle Program
<http://www.oee.nrcan.gc.ca/vehicles/>

Addendum 1

High Fuel Efficiency Vehicles[1]

A. Diesel Fueled Vehicles

Vehicle	Diesel Mileage (city/hwy)	Mileage with a Gasoline Engine
VW Golf & New Beetle	46 / 61	29 / 40
VW Jetta	46 / 61	29 / 40
VW Passat	32 / 50	26 / 40
VW Touareg	23 / 36	16 / 24

Jeep Liberty and Mercedes E320 CDI figures not yet available

B. Hybrid Gas–Electric Vehicles

Honda Insight	72 / 86
Toyota Prius	71 / 67
Honda Civic	58 / 61

Toyota Highlander, Ford Escape, Lexus RS SUV, Honda Accord, Dodge Ram, Chevrolet Silverado, GMC Sierra figures not yet available

C. Fuel Efficient Gasoline Engine Vehicles

Toyota Echo	42 / 54	Pontiac Vibe	37 / 47
Toyota Corolla	40 / 53	Acura 1.7EL	36 / 46
Honda Civic	38 / 50	Dodge SX2.0	35 / 48
Toyota Matrix	37 / 47	Mini Cooper	34 / 48

D. Vehicles with the WORST Fuel Efficiency

Vehicles such as the Hummer, Ford Excursion and Lincoln Navigator are not rated by Natural Resources Canada due to their high weight, but would otherwise be on this list.

Dodge Ram	11 / 15	Chevrolet Avalanche	13 / 18
Ferrari 575 MM	11 / 21	GMC Yukon	13 / 18
Chevrolet Silverado	13 / 18	Chevrolet Tahoe	13 / 18
Chevrolet Suburban	13 / 18	GMC Sierra	13 / 18

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[1] All mileage figures are taken from the Fuel Consumption Guide 2004 published by Natural Resources Canada, Office of Energy Efficiency (www.oee.nrcan.gc.ca/vehicles). Figures may vary slightly according the specific transmission and vehicle configuration selected. Some of these vehicles may not be available until the 2005 model year and a few may have limited availability.

APPENDIX F

Information Pamphlets

- **Want to Save Money and Help the Environment? - Car Care for Clean Air**
- **C.A.N. DO Fact Sheet**

Source: Lung Association of Nova Scotia
www.ns.lung.ca

Lung Association Nova Scotia

17 Alma Crescent
Halifax, NS B3N 3E6

The Asthma People
1-888-566-LUNG

Want to Save Money and Help the Environment?
Car Care for Clean Air

Every day driving can put your engine out of adjustment. This wastes gasoline, wears your engine out more quickly and gives off extra pollutants into the air. This air pollution can make you sick. It affects your body's ability to fight infection and you are more likely to get colds and other lung infections. Polluted air is especially dangerous to children, pregnant women and people with lung and heart disease.

What can YOU do to save money and reduce pollution?

- Have your car emissions checked at least once a year at your local service center.
- Regular tune-ups can improve fuel efficiency by up to **15%**–a big savings at the pump!
- Do not tamper with your catalytic converter. Some people think that doing this will improve car performance and fuel efficiency. This is not true. When working properly, catalytic converters reduce harmful emissions by up to **90%**!
- Observe the speed limit. For every 5 miles faster you travel, you decrease gas mileage about **4%**. It adds up!
- Accelerate smoothly. Drive at a steady pace.
- Braking hard wastes gas and wears tires and brakes out faster.
- Do not idle your engine longer than 10 seconds. It is more fuel efficient and environmentally friendly to turn it off and start it up again when you are ready.
- Use the type of gas, oil and octane suggested by your car manufacturer.
- Use public transportation or car pools when possible.

C.A.N. DO is the official environmental health program of The Lung Association.

C.A.N. DO
The movement for Clean Air Now

- Check tire pressure regularly. You use about **2%** more fuel for every pound per square inch tires are under-inflated.
- Follow your car's maintenance schedule-especially oil changes.

What you need to know about engine check-ups:

If you have smoke coming out of your exhaust, it may mean:

- Worn piston rings
- Incorrect fuel system adjustment
- Carburetor of fuel injection problems
- Engine control computer problem

If an exhaust analyzer shows high carbon monoxide (CO), it may mean:

- Dirty air filter
- Clogged PCV system
- Malfunctioning cold start system
- Misadjusted fuel system (operating too rich)
- Misadjusted ignition timing
- Malfunctioning thermostatic air control
- Malfunctioning air injection system

If an exhaust analyzer shows high hydrocarbons (HC), it may mean:

- Fouled spark plugs
- Faulty spark plug wires
- Faulty ignition cap or rotor
- Incorrect ignition timing
- Misadjusted fuel system (operating too lean)
- Vacuum leak

For more information contact:

Lung Association
Nova Scotia
® 1-888-566-5864
www.ns.lung.ca

"When you can't breathe, nothing else matters"

Revised August 2003

Lung Association
Nova Scotia
1-888-566-5864
www.ns.lung.ca

C.A.N. DO Fact Sheet

Vehicle Fuels

Exhaust from vehicles (cars, trucks, buses) as well as off-road engines (lawn mowers, snow mobiles) causes significant health and environmental risk. The combustion of fossil fuels such as gasoline and diesel creates numerous air pollutants. Although emission technology is improving, vehicle use is increasing. Thus transportation continues to be a major source of air pollution.

Outdoor Air Quality and Environmental Problems

Carbon dioxide is a major contributor to the greenhouse effect and climate change. Your car produces twice its weight in carbon dioxide each year. About 30% of all CO2 emissions in Canada come from road vehicles.

Vehicles also contribute to smog and acid rain, producing 19% of nitrogen oxides, 23% of volatile organic compounds (which together create ground level ozone, a major component of smog) and 37% of the total carbon monoxide released each year as a result of human activity. Amounts ofsulphur oxides continue to decrease as low sulphur fuels gain market penetration.

The production of particulate matter (PM) less than 10□m is associated particularly with the combustion of carbon-based and sulphur-based chemicals such as gasoline and diesel. PM is a component of smog, is deposited as soot, can accumulate in the upper atmosphere and affect climate change, and when inhaled can cause serious health effects.

Health Effects

Exposure to ground level ozone can irritate the eyes and can be harmful to the lungs. Shortness of breath, wheezing, fatigue, headaches and nausea are symptoms associated with exposure to ozone, particularly in children, the elderly and others having preexisting respiratory conditions. Exposure also has been identified as a cause of premature mortality.

Carbon monoxide can reduce the amount of oxygen that is carried by the blood to all tissues in the body.

The health effects of PM are varied and may be dependent on the size, shape, and chemical makeup of the particles. Exposure has been linked with mild symptoms such as coughing and wheezing, with exacerbation of preexisting conditions such as bronchitis and COPD, and with serious health effects including cancer, heart attacks and strokes.

Sulphur and nitrogen oxides and acid aerosols will irritate the lungs and exacerbate preexisting respiratory conditions.

What You Can Do

- Reducing your use of motor vehicles will reduce the amount of air pollution. Car-pooling, using mass transit, bicycling and walking are all excellent alternatives.

- "Green" vehicles are increasingly available as are various alternatives to gasoline and diesel fuels. The use of any fuel, however, will have some environmental impact. When comparing alternative fuels to conventional gasoline and diesel fuels, emission reduction calculations can vary depending on the type of vehicle and emission control technology used. Comparisons of cost and emission levels are not available for all fuels. Alternative fuels include:

Propane: Derived from natural gas, propane is a popular alternative fuel and is available across Canada. When compared with gasoline, propane produces fewer air pollutants and greenhouse gas emissions. Existing vehicles can be converted to use only propane, or both gasoline and propane. Use of propane can realize fuel cost savings of up to 40%.

Natural gas: Vehicles fuelled by natural gas use the household heating product. It is safe, reliable and is stored as a compressed gas in pressurized cylinders. Compared with gasoline, natural gas produces fewer air pollutants, and fewer greenhouse gas emissions. Use of natural gas in vehicles continues to increase world-wide. Existing vehicles can be converted to use either natural gas only, or a combination of natural gas and gasoline. Factory-produced vehicles are available. Use of natural gas can realize fuel cost savings of up to 40%.

Methanol: In North America methanol is commonly made from natural gas, but it can be made from renewable sources such as wood and municipal waste. Flexible-fuel vehicles are factory-built and allow the use of either M85 (a blend of 85% methanol/15% gasoline) or straight gasoline, or a combination of the two. The use of methanol reduces pollutants contributing to ground-level ozone.

Ethanol: Ethanol can be made from renewable resources such as grain, wood and municipal waste. Most conventional vehicles can use up to 10% ethanol without any modifications. Many filling stations in Canada offer such blends. Use of ethanol reduces greenhouse gas emissions.

Biodiesel: Biodiesel can be made from vegetable oils and animal fats. It produces few emissions that regular diesel and is biodegradable.

Electricity: Electric-powered vehicles produce no tailpipe emissions, but use electricity from sources such as electric power generating facilities which do produce pollution. New technologies continue to improve the speeds and distances that vehicles can travel while powered by electricity. Hybrid vehicles which combine electricity and fuels are increasingly available. Electric vehicles are energy efficient in part because they convert friction into electricity.

Hydrogen: Hydrogen is likely to be the vehicle fuel of the future. When produced from renewable sources it has the potential to be the cleanest alternative fuel. Hydrogen gas is the most abundant element on earth, but needs to be extracted from compounds such as natural gas or from water before it is available as a fuel. It will likely be many years before hydrogen is a cost-effective and commercially available fuel.

Health experts, environment experts and thousands of Canadians are concerned about the risks of air pollution. The Lung Association is committed to helping people take action to reduce those risks. That's why we've created C.A.N. DO, The Movement for Clean Air Now. For more information, contact the Lung Association at 1-888-566-LUNG.

APPENDIX G

Gasoline Acts

- Prince Edward Island
- Newfoundland and Labrador
- Quebec

PLEASE NOTE

This document, prepared by the **Legislative Counsel Office**, is an office consolidation of this regulation, current to February 1, 2004. It is intended for information and reference purposes only.

This document is ***not*** the official version of these regulations. The regulations and the amendments printed in the ***Royal Gazette*** should be consulted to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the ***Table of Regulations***.

If you find any errors or omissions in this consolidation, please notify the Legislative Counsel Office at (902) 368-4291 or by email to pmporter@gov.pe.ca.

CHAPTER G-3

GASOLINE TAX ACT

REGULATIONS

Made by the Lieutenant Governor in Council under the *Gasoline Tax Act* R.S.P.E.I. 1988, Cap. G-3

PART I
GASOLINE TAX ACT

Definitions

1. (1) In this Part

(a) "Act" means the *Gasoline Tax Act* R.S.P.E.I. 1988, Cap. G-3; Act

(b) "agent" means a person constituted an agent of the province for the collection of the tax by an agreement with the Minister; agent

(b.01) "aquaculturist" means an individual, partnership or corporation registered in the province, actively engaged in the production of aquatic plants and animals for sale, being in possession of the appropriate fish, shellfish, or other permits issued by the federal government, and reporting income from the sale of the aquatic plants and animals produced; aquaculturist

(b.1) "base jurisdiction" means the member jurisdiction of Prince Edward Island; base jurisdiction

(c) "bulk plant" means a place where gasoline is stored in storage facilities at a fixed location by a wholesaler for delivery to vendors or for delivery direct to users; bulk plant

(d) "farm" means land, including buildings, whether owned, leased or rented, on or in which farming operations, including poultry, hogs, greenhouse and market; farm

(d.1) "farmer" means an individual, partnership or corporation registered in the province, actively engaged in a farming operation, and reporting income from the sale of products from the farming operation or from providing custom agricultural services to farmers; farmer

(e) "fisherman" means an individual, partnership or corporation registered in the province, actively engaged in a commercial fishery operation, being in possession of the appropriate licenses or permits issued by the federal government and reporting income from the sale of products from the commercial fishing operation; fisherman marked gasoline

(f) "marked gasoline" means gasoline to which a dye or chemical marker has been added in accordance with these regulations and includes gasoline upon which the tax has not been paid if the marker has not been added;

month

(g) "month" when used in reference to an agent's monthly records means the period that under the accounting practices of the agent is treated as the equivalent of a month, and in all other cases means calendar month;

motor vehicle

(h) "motor vehicle" means a motor vehicle registered or required to be registered under the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5;

normal retail price

(h.1) "normal retail price" means the average as determined by the Minister of the retail prices (including all federal taxes but not including provincial tax) at which all grades of gasoline, excluding aviation fuel, are sold by subagents;

member jurisdiction

(h.2) "member jurisdiction" means any province or territory of Canada and any state or territory of the United States including the District of Columbia that is a member of the International Fuel Tax Agreement;

owner

(i) "owner" in the case of a motor vehicle, means the person in whose name the motor vehicle is registered as stated in a certificate or report signed or purporting to be signed by the Registrar of Motor Vehicles;

wholesaler

(j) revoked by EC485/94;

the province

(k) "the province" means the Province of Prince Edward Island;

subagent

(l) "subagent" means a person constituted a subagent for the collection of the tax;

wholesaler

(m) "wholesaler" means a person licensed or required to be licensed as a wholesaler under the *Petroleum Products Act* R.S.P.E.I. 1988, Cap. P-5.

Idem

(2) In these regulations, references to auditors, inspectors and other officers are references to persons appointed as such under the Act. (EC283/72; 92/73; 71/74; 429/80; 221/83; 806/90; 485/94; 874/95; 727/97; 206/99; 549/02; 304/03)

Determination of rate of tax

1.1 Revoked by EC453/94.

Payment of tax

2. (1) On or before the purchase or delivery of gasoline to him, every purchaser shall pay the tax.

(2) On or before the last day of the month following each calendar quarter, every consumer shall pay to the Minister the tax on all gasoline consumed in the previous calendar quarter in respect of which tax has not been paid.

Payment of tax

(3) This section does not apply to purchasers and consumers in respect of the purchase or consumption by them of marked gasoline in accordance with these regulations. (EC283/72; 485/94; 874/95)

Exemption

3. (1) Unless he is an agent or a subagent no person shall sell or deliver gasoline to a purchaser.

Sale of gasoline

(2) Except in the case of a sale or delivery of marked gasoline in accordance with these regulations every agent or subagent shall collect the tax from every purchaser at the time the gasoline is purchased or delivered. (EC283/72)

Collection of tax

4. (1) The Minister or a person authorized by him may issue permits in the form or forms prescribed by the Minister to persons who make application therefor in a form or forms prescribed by the Minister of the following types or kind:

Permits

(a) "Bulk Vendor's Permit", permitting the holder to sell gasoline from a bulk plant or plants described in the permit;
(b) "Vendor's Permit", permitting the holder to acquire gasoline from the holder of a Bulk Vendor's Permit for sale to purchasers;
(c) "Gasoline Storage Permit", permitting the holder to purchase for his own use from the holder of a Bulk Vendor's Permit gasoline that is not marked gasoline;
(d) "Marked Gasoline Permit", permitting the holder to purchase, store and use marked gasoline for his own purpose;
(e) "Gasoline Motor Vehicle Permit", permitting the holder to operate in Prince Edward Island, the gasoline motor vehicle described in the permit;
(f) "Fuel Permit" authorizing the holder to operate in the province the commercial vehicle described in the permit and includes a valid fuel permit issued by a member jurisdiction pursuant to an agreement under section 42.2;
(g) "Single Trip Fuel Permit" authorizing the holder to operate in the province the commercial vehicle described in the permit upon the payment of the fee referred to in subsection (7).

(2) The Minister may prescribe the qualifications to be possessed by persons who apply for any of the permits mentioned in subsection (1) and may refuse the application of any person who does not have the prescribed qualifications.

Qualifications of applicants

Conditions

(3) The Minister may attach conditions or restrictions to any permit issued pursuant to subsection (1) and may revoke a permit or may suspend a permit for a specified period for failure to comply with the conditions or observe the restrictions.

Idem

(4) No person who is the holder of a permit issued pursuant to subsection (1) shall fail to comply with the conditions or fail to observe the restrictions contained in the permit.

Requirement for permit

(5) No person shall sell, purchase, store or use gasoline unless specifically permitted under these regulations.

Exception

(6) Subsection (5) does not apply to a purchaser of gasoline other than marked gasoline with respect to gasoline that has been purchased from the holder of a Vendor's Permit.

Fee

(7) Pursuant to subsection 8.1(3) of the Act, the fee to be charged for the issuance of a Single Trip Fuel Permit is $25.00. (EC283/72; 316/92; 485/94)

Agent's record

5. (1) Every agent shall record in writing every transaction relating to the sale, transfer or delivery of gasoline and shall keep, in a manner approved by the Minister, at each bulk plant a record of every sale, transfer or delivery of gasoline made to or from that bulk plant.

Particulars recorded

(2) The records relating to a particular sale, transfer or delivery of gasoline shall record

(a) the date of the sale, transfer or delivery and the type and quantity of gasoline;

(b) the name and address of the person to whom the gasoline was sold, transferred or delivered whether or not that person was a purchaser or servant, agent, subagent or employee of the agent;

(c) the invoice number and the number of the permit held by the person to whom the gasoline was sold, transferred or delivered if that person is required to hold a permit under these regulations; and

(d) the rate and amount of tax, if any, applicable to the transaction.

Invoices

(3) Every sale, transfer or delivery of gasoline from a bulk plant by an agent shall be evidenced by a serially numbered invoice and the original copy of the invoice shall be given to the person to whom the gasoline is sold, transferred or delivered and a duplicate copy shall be retained by the agent at the bulk plant.

Monthly consolidation

(4) Every agent shall consolidate records of all sales, transfers or deliveries of gasoline of every bulk station or other non-retail outlet operated by him on a monthly basis and shall include in the consolidation all sales, transfers or deliveries of gasoline made from bulk stations or

other non-retail outlets outside Prince Edward Island to the agent or his purchasers in Prince Edward Island. (EC283/72)

Agent's returns

6. (1) On or before the twenty-fifth day of each calendar month, every agent shall deliver to the Minister a return in the form prescribed by the Minister stating in respect of each bulk plant

(a) the total sales, transfers and deliveries of gasoline made by the agent in his preceding accounting month indicating the type and quantity of gasoline and the sales, transfers and deliveries;

(b) the amount of gasoline in the possession of the agent at the beginning of the accounting month, the amount of gasoline manufactured, imported or otherwise acquired by the agent during the accounting month and the amount of gasoline in the possession of the agent at the end of the accounting month; and

(c) the amount of gasoline lost by the agent on account of evaporation, leakage or other causes.

Particulars

(2) The agent shall deliver with the return such other information or materials as the Minister may from time to time require.

Remission of tax

(3) On or before the twenty-fifth day of each calendar month, each agent shall remit to the Minister the tax on all sales, transfers and deliveries of gasoline in respect of which tax has been collected.

Non-taxable sales

(4) In establishing the number of gallons or litres on which the agent shall remit the tax, the agent may deduct from the total quantity of gasoline sold, transferred or delivered in the month

(a) the quantity of gasoline sold, transferred or delivered to another person in Prince Edward Island who is an agent;

(b) the quantity of gasoline sold, transferred or delivered to a person outside Prince Edward Island if the sale, transfer or delivery is evidenced by the agent's certificate stating the name and address of the person, the invoice or voucher number and a description of the gasoline and method of transportation used;

(c) the quantity of marked gasoline on which tax is not payable under these regulations; and

(d) the quantity of gasoline purchased on a credit card of the agent, by the Government of the Province of Prince Edward Island or any Departments thereof.

Commission

(5) The commission allowed to such agent shall be one-tenth of one cent for each gallon or 4.55 litres of gasoline sold on which he has collected and remitted the tax after deducting therefrom the items mentioned in subsection (4).

Deduction of commission

(6) The agent may deduct from the amount of tax remitted the commission to which he is entitled under these regulations but no other deduction shall be made without the consent of the Minister. (EC283/72; 545/77; 602/78)

Vendor's records

7. (1) Every holder of a Vendor's Permit shall keep and maintain records for each month at his place of business relating to the following matters:

(a) all acquisitions of gasoline whether the gasoline is acquired for his own use or for resale and the invoices evidencing such acquisitions;

(b) total daily sales, transfers or deliveries of each type and grade of gasoline evidenced by pump meter readings;

(c) the inventory of each type and grade of gasoline in his possession at the opening of business on the first day of each month, and at the close of business on the last day of each month;

(d) each sale, transfer or delivery of marked gasoline; and

(e) such other matters as the Minister may from time to time determine.

Form

(2) The records required to be kept and maintained under subsection (1) shall be in a form approved by the Minister.

Meters

(3) Every holder of a Vendor's Permit shall provide for each pump a meter to record the flow of gasoline from the pump to which the meter is affixed and shall take all readings from the meter necessary to comply with subsection (1).

Notice of rate of tax

(4) Every holder of a Vendor's Permit shall indicate on his gasoline and diesel oil pumps, by use of a notice provided by the Minister, the rate of tax payable under this Act that is included in the price. (EC283/72; 506/80)

Vendor's reports

8. Revoked by EC698/79.

Consumer storage records

9. (1) Every holder of a Gasoline Storage Permit who has a storage tank capable of storing five hundred gallons or more, or 2275 litres or more, shall equip the tank with a pump and a meter and shall keep and maintain records for each month relating to the following matters:

(a) all gasoline acquired by him whether or not it is stored;

(b) the use he makes of all gasoline acquired by him;

(c) the amount of gasoline held in storage by him at the beginning of each month and the amount held at the end of the month.

Invoices

(2) Every holder of a Gasoline Storage Permit shall obtain and keep an invoice for each acquisition of gasoline.

(3) Upon the demand of the Minister, an auditor or an inspector, the holder of a Gasoline Storage Permit who is required under subsection (1) to keep records shall produce the records and shall support the records with invoices and meter readings. (EC283/72; 602/78) Audit of records

10. (1) Every holder of a Marked Gasoline Permit shall keep records for each month relating to the following matters: Marked gasoline records

(a) all marked gasoline acquired by him; and

(b) the use he makes of all marked gasoline acquired by him.

(2) Every holder of a Marked Gasoline Permit shall obtain and keep an invoice for each acquisition of marked gasoline. Invoices

(3) Revoked by EC228/87. Exception

11. (1) If required by the Minister under subsection (2), every consumer shall keep and maintain for each calendar quarter a record of Consumer records

(a) all gasoline acquired by him outside of and brought into Prince Edward Island; and

(b) all gasoline other than marked gasoline acquired by him within Prince Edward Island; and

(c) the use he made of gasoline referred to in clauses (a) and (b).

(2) Where the Minister believes that a person is acquiring gasoline outside of Prince Edward Island and is bringing it into Prince Edward Island he may, by notice in writing, require the person to keep and maintain the record described in subsection (1). Where required

(3) When making payment of tax to the Minister pursuant to subsection 2(2) every consumer shall deliver a report to the Minister in the form prescribed by him relating to the preceding calendar quarter stating the quantity of gasoline consumed during the calendar quarter and such other information and material as the Minister may from time to time require. (EC283/72; 485/94) Report

12. Revoked by EC485/94. Rebate

13. (1) Records required to be kept and maintained and returns and reports required to be made under these regulations shall be kept, maintained and made in the form and manner prescribed in these regulations or by the Minister and in all cases shall be legible and clear. Form of reports, etc.

(2) Every person required to keep and maintain records under these regulations shall Retention of records

(a) retain the records in his possession at his place of business or such other place as the Minister may determine;

(b) retain safe possession of the records for a period of at least four years from the date to which the record relates unless the Minister consents to the prior destruction of the records; and

(c) make the records available whenever required for inspection by an auditor, inspector or any other person authorized by the Minister.

Directions

(3) In keeping and maintaining records or in making returns and reports, every person shall comply with the directions of an auditor, inspector or any other person authorized by the Minister.

Exception to subsection (2)

(4) Notwithstanding subsection (2) the Minister may authorize a person who is required to retain records or his personal representative or assignee to deliver the records to the Commissioner or a person designated by the Minister in lieu of retaining the records at the place and for the time prescribed by subsection(2). (EC283/72; 485/94)

Commission to Dealers Association

14. The Minister may authorize a commission of one twentieth of one cent per gallon or 4.55 litres to be paid to the Prince Edward Island Retail Gasoline Dealers Association on sales of gasoline by a vendor on the following conditions:

(a) that the vendor has obtained a license to retail gasoline; and

(b) that no commission has been paid to the vendor under subsection 6(5). (EC734/88)

Exemptions

15. (1) Except as may be otherwise provided no tax shall be payable by the purchaser or consumer in respect of

(a) the purchase or consumption of marked gasoline in accordance with these regulations;

(b) revoked by EC698/79;

(c) the purchase or consumption of naphtha gasoline;

(d) the purchase or consumption of propane gasoline when not used for the operation of an internal combustion engine.

Marked gasoline

(2) Marked gasoline may only be purchased, stored and used

(a) by a person who holds a Marked Gasoline Permit;

(b) by the Government of the Province of Prince Edward Island or any agency or department thereof and used solely for government purposes;

(c) by a person who requires marked gasoline for use in a marine craft that is registered outside Prince Edward Island and which is being actually employed by him in fishing; and

(d) by a person who requires marked gasoline for use in a commercial vessel used for

(i) the carriage of passengers or freight from Prince Edward Island to another province, territory or country, or

(ii) the dredging of the ocean bed in extra-territorial waters.

(3) A person who holds a Marked Gasoline Permit may use marked gasoline, except for operating a motor vehicle or any equipment affixed to a motor vehicle if the equipment is powered by the same engine that powers the motor vehicle *Idem*

(a) for furnishing power for farming operations, undertaken by a farmer on a farm;

(b) for furnishing power for boats only when the boats are being used by fishermen in the practice of fishing;

(b.1) for furnishing power for boats and equipment only when the boats and equipment are being used by aquaculturists in the practice of aquaculture;

(c) for use in stationary engines solely and only when operated for manufacturing, railway or industrial purposes;

(d) for use in ski-tows operated within the province;

(e) revoked by EC556/88;

(f) for use in operating a curling, skating or hockey rink owned or operated by a municipality or non-profit organization;

(g) for use in operating golf courses located in the Province of Prince Edward Island;

(h) for furnishing power for equipment when used in sawmill operations;

(i) for furnishing power for equipment used solely and only in plants for the production of fertilizer, lime and feed grains;

(j) for furnishing power in equipment when used for commercial forestry operations;

(k) for furnishing power for equipment used in custom potato grading operations;

(l) for equipment designed for grooming snowmobile trails;

(m) for furnishing power for boats used to provide water tours where the boat is in possession of a valid Marine Safety Inspection Certificate issued by the federal Department of Fisheries and Oceans and Coast Guard Canada;

(n) for furnishing power for boats used in the piloting of ships;

(o) for furnishing power for equipment used in peat moss operations;

(p) for furnishing power to motorized equipment for use in agricultural and aquacultural operations owned and operated by AVC Incorporated; and

(q) for furnishing power for equipment used by custom agricultural contractors providing custom agricultural services to farmers and for no other commercial purpose. (EC283/72; 92/73; 947/73; 279/74; 426/74; 1016/77; 698/79; 228/87; 556/88; 52/93; 604/93; 727/97; 409/98; 206/99; 175/02; 280/03;439/03)

Marking of gasoline

16. (1) Subject to the other provisions of these regulations the marking of gasoline shall be done in the manner prescribed in this regulation or in such other manner as the Minister may approve.

Dye

(2) Gasoline that is to be sold or delivered as marked gasoline shall be marked by the addition to the gasoline of a dye or chemical marker of the type known as "TEF RED FF 20" or of the type known as "MORTRACE FOM BB".

Proportions

(3) The dye or marker shall be added to gasoline at a minimum rate of fourteen parts per million.

Supply of dye

(4) The dye or marker shall be supplied by the Minister to agents and the cost of the dye or marker shall be borne by the province.

Addition of dye

(5) The agents shall add the dye or marker on the premises of a bulk plant in the province.

Idem

(6) The addition of the dye or marker to gasoline shall be done by a method that is approved by the Minister that dyes the gasoline in the proportions prescribed by this regulation.

Idem

(7) The dye or marker shall be added to gasoline at or before the time that it is being loaded for delivery or for sale to persons permitted to purchase or consume marked gasoline.

Requirements

(8) A person authorized or required to mark gasoline shall

(a) maintain sufficient records of the quantities of dye or marker received and used by him to disclose an accurate account of the dye or marker used by him;

(b) take all reasonable precautions for the safekeeping of the dye or marker and to prevent unauthorized use of the dye or marker;

(c) requisition from time to time from the Minister or person designated by the Minister sufficient quantities of dye or marker to ensure that he has on hand at all times a quantity of dye or marker that is adequate for the marking that he is required to do. (EC283/72; 630/74; 1016/77; 228/87; 683/91; 751/94; 162/96; 772/98)

Offences concerning marked gasoline

17. (1) No person shall have in his possession the dye or marker prescribed by or under these regulations for the marking of gasoline unless he is required or permitted by these regulations to have it in his possession or is authorized by the Minister to have it in his possession.

Idem

(2) No person shall add to gasoline the dye or marker prescribed by or under these regulations in any manner or at any time or place otherwise than as required or permitted under these regulations.

(3) No person shall add to or introduce into marked gasoline any substance, compound or preparation or submit marked gasoline to any mechanical, chemical or other process for the purpose of removing the dye or marker or of rendering it invisible. *Idem*

(4) No person shall mix or combine any other grade or type of gasoline with marked gasoline. (EC283/72; 228/87) *Idem*

18. (1) No person shall sell or deliver marked gasoline to a person who is not authorized to purchase and use marked gasoline. Sale to unauthorized person

(2) Subsection (1) does not apply to a sale or delivery to an agent or to a holder of a Vendor's Permit that authorizes him to acquire marked gasoline for sale to purchasers. Exception

(3) No person shall purchase or store marked gasoline unless he is permitted under subsection 15(2) to purchase and store marked gasoline. Purchase

(4) No person shall use marked gasoline for any purpose other than a purpose for which the use of marked gasoline is permitted under these regulations. (EC283/72) Use

19. (1) A person who is not the holder of a Bulk Vendor's Permit shall not store gasoline at a bulk plant or sell or deliver gasoline from a bulk plant. Offences, bulk vendors

(2) A person who holds a Bulk Vendor's Permit shall not *Idem*
(a) sell or deliver gasoline from a bulk plant that is not described in the permit; or
(b) sell or deliver gasoline to a person who is not the holder of a Vendor's Permit, a Gasoline Storage Permit or a Marked Gasoline Permit. (EC283/72)

20. A person who is not the holder of a Vendor's Permit shall not acquire or store gasoline for sale to purchasers or sell gasoline to a purchaser. (EC283/72) Offences, vendors

21. Unless he is the holder of a Gasoline Storage Permit a person shall not acquire for his own use from a holder of a Bulk Vendor's Permit gasoline that is not marked gasoline. (EC283/72) Offences, storage

22. (1) Unless he is authorized under subsection 15(2) to purchase, store and use marked gasoline, no person shall have possession of marked gasoline. Offence, marked gasoline

(2) This section does not apply to the acquisition or storage of marked gasoline by a wholesaler or by the holder of a Bulk Vendor's Permit or Exception

of a Vendor's Permit that authorizes him to acquire marked gasoline for sale to purchasers. (EC283/72)

PART II
DIESEL OIL

Definitions

23. In this Part

bulk plant

(a) "bulk plant" means a place where diesel oil is stored in storage facilities at a fixed location by a wholesaler for delivery to vendors or for delivery direct to users;

diesel motor vehicle

(b) "diesel motor vehicle" means a motor vehicle that uses diesel oil as a fuel;

marked diesel oil

(b.1) "marked diesel oil" means diesel oil to which a dye or chemical marker has been added in accordance with these regulations;

normal retail price

(c) "normal retail price" means the average as determined by the Minister of the retail price (including all federal taxes but not including provincial tax) of diesel oil sold by subagents. (EC283/72; 429/80; 221/83; 228/87; 806/90)

Determination of rate of tax

23.1 Revoked by EC453/94.

Payment of tax

24. (1) On or before the purchase or delivery of diesel oil every purchaser shall pay the tax.

Idem

(2) On or before the last day of the month following each calendar quarter, every consumer shall pay to the Minister the tax on all diesel oil consumed in the previous calendar quarter in respect of which tax has not been paid.

Exception

(3) This section does not apply to purchasers and consumers in respect of the purchases and consumption by them of marked diesel oil in accordance with these regulations. (EC283/72; 228/87; 485/94; 874/95)

Collection of tax

25. (1) Unless he is an agent or subagent for the collection of the tax, no person shall sell or deliver diesel oil to a purchaser.

Idem

(2) Except in the case of a sale or delivery of marked diesel oil under section 38, every agent or subagent shall collect the tax from every purchaser at the time the diesel oil is purchased or delivered. (EC283/72; 228/87)

Commission

26. Every agent is allowed a commission of one-tenth of one cent for each gallon or 4.55 litres of diesel oil sold on which he has collected and remitted tax. (EC545/77; 602/78)

26.1 Section 14 applies on sales of diesel oil by a vendor Application

(a) with the substitution of a reference to diesel oil for a reference to gasoline; and

(b) with the substitution of a reference to section 26 for the reference to subsection 6(5). (EC734/88)

27. (1) The Minister or person authorized by him may issue permits in a form or forms prescribed by the Minister to persons who make application therefor in a form or forms prescribed by the Minister of the following types or kinds: Permits

(a) "Diesel Motor Vehicle Permit" permitting the holder to operate in Prince Edward Island, the diesel motor vehicle described in the permit;

(b) Diesel Oil Storage Permit" permitting the holder to purchase for his own use from the holder of a Bulk Vendor's Diesel Oil Permit diesel oil that is not marked diesel oil;

(c) "Bulk Vendor's Diesel Oil Permit" permitting the holder to sell diesel oil from a bulk plant or plants described in the permit;

(d) "Vendor's Diesel Oil Permit" permitting the holder to acquire diesel oil from the holder of a bulk vendor's diesel oil permit for sale to purchasers;

(e) "Marked Diesel Oil Permit" permitting the holder to purchase, store and use marked diesel oil for his own purpose;

(f) "Fuel Permit" authorizing the holder to operate in the province the commercial vehicle described in the permit and includes a valid fuel permit issued by a member jurisdiction pursuant to an agreement under section 42.2;

(g) "Single Trip Fuel Permit" authorizing the holder to operate in the province the commercial vehicle described in the permit upon the payment of the fee referred to in subsection (7).

(2) The Minister may prescribe the qualifications to be possessed by persons who apply for any of the permits mentioned in subsection (1) and may refuse the application of any person who does not have the prescribed qualifications. Qualifications

(3) The Minister may attach conditions or restrictions to any permit issued pursuant to subsection (1) and may revoke a permit or may suspend a permit for a specified period for failure to comply with the conditions or observe the restrictions. Conditions

(4) No person who is the holder of a permit issued pursuant to subsection (1) shall fail to comply with the conditions or fail to observe the restrictions contained in the permit. Compliance with conditions

Requirements for permit

(5) No person shall sell, purchase, store or use diesel oil unless specifically permitted under these regulations.

Exception

(6) Subsection (5) does not apply to a purchaser of diesel oil other than marked diesel oil with respect to diesel oil that has been purchased from the holder of a Vendor's Permit.

Fee

(7) Pursuant to subsection 8.1(3) of the Act, the fee to be charged for the issuance of a Single Trip Fuel Permit is $25.00. (EC283/72; 228/87; 316/92; 485/94)

Agent's records

28. (1) Every agent shall in respect of transactions relating to diesel oil make and keep records in the manner and at the place prescribed by section 5 with respect to records of transactions relating to gasoline and in relation to diesel oil shall make returns and remittances at the same time, in the same form and manner as an agent is required to make returns and remittances in relation to gasoline by section 6.

Idem

(2) Sections 5 and 6 apply *mutatis mutandis* to agents in relation to transactions by them relating to the sale, transfer or delivery of diesel oil. (EC283/72)

Vendor's records

29. Every holder of a Vendor's Diesel Oil Permit shall in reference to transactions relating to diesel oil keep and maintain records in the same form and manner as records are required to be kept by the holder of a Vendor's Permit under section 7 excepting that he shall keep a record of each sale, transfer or delivery of diesel oil in lieu of a record of sales, transfers or deliveries of marked gasoline referred to in clause 7(1)(d). (EC283/72)

Vendor's reports

30. Revoked by EC698/79.

Vehicle records

31. Every holder of a Diesel Motor Vehicle Permit shall keep and maintain for each calendar quarter a record of

(a) all diesel oil acquired by him in Prince Edward Island supported by invoices;

(b) the use he made of the diesel oil acquired by him in Prince Edward Island;

(c) the refuelling in Prince Edward Island of each diesel motor vehicle; and

(d) trips made and the miles or kilometres travelled in Prince Edward Island by each diesel motor vehicle owned or operated by him. (EC283/72; 602/78; 485/94)

Records

31.1 The provisions of section 10 apply with the necessary changes to marked diesel oil. (EC228/87)

32. Every holder of a Diesel Motor Vehicle Permit shall not later than the last day of the month following each calendar quarter file with the Minister a report in a form prescribed by the Minister, giving the following particulars in respect of the preceding calendar quarter

Vehicle reports

(a) the number of diesel motor vehicles owned and the number operated by him in Prince Edward Island;

(b) the number of gallons or litres of diesel oil placed in the fuel systems of those vehicles in Prince Edward Island;

(c) the source of supply of the diesel oil referred to in clause (b);

(d) the total miles or kilometres travelled by each diesel motor vehicle in Prince Edward Island;

(e) such other information as the Minister requires. (EC283/72; 602/78; 485/94; 874/95)

Exemption

33. The Minister may exempt the holder of a Diesel Motor Vehicle Permit from complying in whole or in part with sections 31 and 32 for such term and upon such conditions as prescribed. (EC283/72)

Storage records

34. Section 9 applies *mutatis mutandis* to every holder of a Diesel Oil Storage Permit. (EC283/72)

Consumer's records

35. (1) If required by the Minister under subsection (2), every consumer of diesel oil shall keep and maintain for each calendar quarter a record of

(a) all diesel oil acquired by him outside of and brought into Prince Edward Island; and

(b) all diesel oil acquired by him within Prince Edward Island; and

(c) the use he made of diesel oil referred to in clauses (a) and (b).

Where required

(2) Where the Minister believes that a person is acquiring diesel oil outside of Prince Edward Island and is bringing it into Prince Edward Island he may by notice in writing require the person to keep and maintain the records prescribed in subsection (1).

Report

(3) When making payment of the tax to the Minister pursuant to subsection 24(2), every consumer shall deliver a report to the Minister in the form prescribed by him relating to the preceding calendar quarter, stating the quantity of diesel oil consumed during the calendar quarter and such other information and material as the Minister may from time to time require. (EC283/72; 485/94)

Rebate of diesel oil tax

36. Revoked by EC485/94.

Form of reports, etc.

37. Section 13 applies *mutatis mutandis* to records, returns and reports required to be kept, maintained or made under this Part. (EC283/72)

Exemptions

38. Notwithstanding section 24, the provisions of section 15 apply with the necessary changes to the purchase or consumption of diesel oil, and, in addition to the requirements of those provisions, marked diesel oil may be purchased, stored and used only by a person who requires marked diesel oil for use in heating other than for the operation of an internal combustion engine. (EC228/87)

Offences

39. (1) No person shall put or cause to be put in the fuel system of a diesel motor vehicle owned or operated by him any diesel oil

(a) on which he does not or has not paid the tax; or

(b) that is obtained from a source other than from the holder of

(i) a Bulk Vendor's Diesel Oil Permit,

(ii) a Vendor's Diesel Oil Permit,

(iii) a Diesel Oil Storage Permit.

Idem

(2) No person shall deliver diesel oil into the fuel system of a diesel motor vehicle unless the operator of the vehicle produces a valid Fuel Permit or Single Trip Fuel Permit issued under these regulations for the vehicle.

Idem

(3) No person shall sell or deliver diesel oil

(a) into the fuel tank of a diesel motor vehicle;

(b) for use in a diesel motor vehicle,

unless he is the holder of either a Bulk Vendor's Diesel Oil Permit, a Vendor's Diesel Oil Permit, or Diesel Oil Storage Permit.

Idem

(4) No person shall operate or cause to be operated a diesel motor vehicle unless a Fuel Permit or Single Trip Fuel Permit in respect of that vehicle is in force.

Sale to unauthorized person

(5) No person shall sell or deliver marked diesel oil to a person who is not authorized to purchase and use marked diesel oil.

Exemption

(6) Subsection (5) does not apply to a sale or delivery to an agent or to a holder of a Vendor's Permit that authorizes him to acquire marked diesel oil for sale to purchasers.

Prohibition

(7) Except as provided in section 38, no person shall purchase, store or use marked diesel oil for his own purpose unless he is the holder of a marked diesel oil permit.

Use

(8) No person shall use marked diesel oil for any purpose other than a purpose for which the use of marked diesel oil is permitted under these regulations.

Possession

(9) Unless he is authorized under section 38 to purchase, store and use marked diesel oil, no person shall have possession of marked diesel oil. (EC283/72; 228/87; 485/94)

39.1 The provisions of sections 16, 17, 19 and 20 apply with the necessary changes to diesel oil and marked diesel oil. (EC228/87)

Application of Part II

PART III
MISCELLANEOUS

Further offences

40. Revoked by EC390/91.

Idem

41. Revoked by EC390/91.

Rebates

42. (1) The Minister may authorize a rebate of gasoline or diesel tax or any portion thereof to a purchaser upon receipt of an application.

Application for rebate

(2) The application shall be made on a form to be supplied by the Minister and shall be accompanied by the original invoice or a true copy thereof showing the number of gallons or litres of gasoline (diesel) purchased, the quantity or grade of the gasoline (diesel), the price per gallon or litre and the amount of tax for which the refund is claimed. (EC159/74; 602/78)

Communication

42.1 Revoked by EC390/91.

Provisions for administration and enforcement of agreement

42.2 An agreement on the application, collection and division of tax with member jurisdictions shall provide for the following:

(a) the collection, division, apportionment and payment of tax to member jurisdictions;

(b) identification and permitting of commercial vehicles registered in the base jurisdiction for operation in all member jurisdictions;

(c) record keeping and reporting requirements and accounting by the base jurisdiction for all persons who hold a valid fuel permit for operation in all member jurisdictions;

(d) assessment and appeal procedures;

(e) such other provisions as are necessary for the administration and enforcement of the agreement. (EC485/94)

False information

43. Revoked by EC390/91.

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(Includes disclaimer and copyright information and details about the availability of printed and electronic versions of the Statutes.)

Table of Public Statutes **Main Site** **How current is this statute?**

Responsible Department

RSNL1990 CHAPTER G - 1

GASOLINE TAX ACT

Amended:

RSN 1990 cR-8 s44; 1991 c7 s1; 1991 c43; 1992 c16 s9; 1992 c25; 1992 c37 s1; 1992 c44 s1; 1992 c48 s44; 1992 c54 – this amendment is subject to proclamation and is included in this consolidation; 1993 c32; 1993 c32; 1993 c52 s12; 1993 c53 s11; 1994 c5;1994 c34 s10; 1995 c22; 1997 c13 s25; 1999 c22 s11; 2002 c15

CHAPTER G-1

AN ACT RESPECTING A TAX UPON THE CONSUMER OF GASOLINE AND OTHER SIMILAR LIQUIDS

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Short title

1. This Act may be cited as the *Gasoline Tax Act.*

1978 c39 s1

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Definitions

2. In this Act

(a) [Rep. by 1991 c7 s1]

(b) "collector" means a person appointed an agent of the minister for the collection of the tax imposed by this Act;

(b.1) "deputy collector" means a retailer or a wholesaler, who is not a collector;

(b.2) "fleet" means all interjurisdictional motor vehicles operated by an interjurisdictional carrier;

(c) "gasoline" includes every liquid or combination of liquids, under whatever name it is known or sold, that is capable of being used for the purpose of generating power in an internal combustion engine whether or not the liquid or combination or a part of it is produced, derived or recovered from petroleum, natural gas, shale or coal;

(d) "inspector" means a person appointed under section 42;

(d.1) "interjurisdictional carrier" means the owner or lessee of an interjurisdictional motor vehicle;

(d.2) "interjurisdictional motor vehicle" means a diesel powered "commercial motor vehicle" as defined in the *Highway Traffic Act* , used to transport goods or passengers between the province and another jurisdiction, including buses other than school buses;

(e) "licence" means a valid licence issued under this Act;

(f) "licensee" means a person who holds a valid licence issued to that person under this Act;

(g) "marked" means marked by a specific dye as required by the regulations;

(h) "marked gasoline" means gasoline marked in accordance with the regulations;

(i) "minister" means the Minister of Finance;

(j) "outlet" means a station, shop, establishment, vehicle or other place or thing from or in which gasoline is kept for sale;

(j.1) "registered" or "registration" means registered under section 17.1;

(k) "retail purchaser" means a person who, by a sale, acquires gasoline not for resale but

(i) for his or her own consumption or use or his or her own intended consumption or use or for the consumption or use or the intended consumption or use of other persons at his or her expense, or

(ii) on behalf of or as the agent for a principal who wishes to acquire the gasoline for consumption or use by that principal or by other persons at the expense of that principal;

(l) "retail sale" means a sale to a retail purchaser;

(m) "retailer" means a person holding a valid licence issued under this Act authorizing that person to sell gasoline or keep gasoline for sale direct to retail purchasers;

(n) "return" means information obtained under this Act or the regulations from the records of an interjurisdictional carrier, a licensee or taxpayer, or from a 3rd party where that information relates to the licensee or taxpayer;

(o) "sale" means a sale for cash or on credit or a sale where the price is payable by instalments, and includes a barter, an exchange and another contract by which, at a price or other consideration, a person gives gasoline to another;

(p) "tax" means the tax imposed by this Act and includes all penalties and interest that are added to the tax under this Act;

(q) "tax-exempt gasoline" means gasoline that is not taxed under this Act;

(r) "taxpayer" means a person who is liable to pay money by way of tax under this Act; and

(s) "wholesaler" means a person who holds a valid licence issued under this Act authorizing that person to sell or keep gasoline for sale otherwise than to retail purchasers.

1978 c39 s2; 1980 c22 s1; 1981 c34 s1; 1989 c6 s1; 1991 c7 s1; 1992 c16 s9; 1993 c32 s1

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Tax levied

3. (1) A person who acquires gasoline at a retail sale in the province shall pay to the Crown at the time of the sale

(a) on all grades of gasoline, other than diesel fuel grade of gasoline or propane fuel grade of gasoline, a tax of $0.165 per litre;

(b) on diesel fuel grade of gasoline, a tax of $0.165 per litre; and

(c) on propane fuel grade of gasoline, a tax of $0.07 a litre.

(2) In addition to the tax payable under paragraph (1)(a), a person who acquires leaded gasoline at a retail sale in the province shall pay to the Crown, at the time of the sale, on all grades of leaded gasoline, a tax of 1.5 cents a litre.

(3) Notwithstanding subsection (1), a person who acquires gasoline at a retail sale in the province for use in an aircraft shall pay to the Crown at the time of the sale a tax of 7/10 of a cent a litre.

(3.1) Notwithstanding subsection (1), a person who acquires gasoline at a retail sale in the province for the operation of sea-going vessels or boats, other than pleasure craft, shall pay to the Crown at the time of the sale a tax of 3.5 cents per litre.

(4) In this section "litre" means the unit of measurement known as the litre and set out in Schedule II of the *Weights and Measures Act* (Canada).

1989 c6 s2; 1991 c7 s2; 1992 c25 s1; 1992 c37 s1; 1994 c5 s1; 1995 c22 s1

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Rep. by 1995 c22 s2

4. [Rep. by 1995 c22 s2]

1989 c6 s3; 1995 c22 s2

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Tax reduction for south coast Labrador

5. Notwithstanding paragraph 3(1)(a) but subject to subsection 3(2) and section 4, a person who acquires gasoline, other than diesel fuel, at a retail sale in the coastal area of southern Labrador extending from the border with the province of Quebec to and including the community of Red Bay, in respect of the consumption or use of the gasoline in that area, shall pay to the Crown at the time of the sale a tax of $0.15 per litre.

1984 c5 s1; 1991 c7 s3; 1993 c53 s11; 1999 c22 s11

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Gasoline brought into province

6. (1) A person other than an interjurisdictional carrier, who brings gasoline into the province, or who receives delivery of gasoline in the province, for that person's own consumption or use as a consumer, shall immediately report the matter in writing to the minister.

(2) A person who is required to make a report under subsection (1) shall supply with the report to the minister the invoice for the gasoline and all other pertinent information that may be required by the minister in respect of the consumption or use of the gasoline.

(3) A person who is required to make a report under subsection (1) shall pay to the Crown, at the same time as the report, a tax in the amount that would be payable if the gasoline had been purchased at a retail sale in the province by that person.

(4) This section does not apply to a person visiting the province as a tourist who brings into the province gasoline in accordance with and not exceeding the quantity prescribed by the regulations.

1978 c39 s4; 1993 c32 s2

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Gasoline held for consumption

7. A person who has or keeps in that person's possession or under that person's control gasoline in respect of which no tax has been paid under this Act and that he or she has, keeps or controls for himself or herself as a consumer shall immediately pay to the Crown a tax in the amount that would be payable if the gasoline had been purchased at a retail sale in the province by that person.

1978 c39 s5

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Gasoline not purchased at retail sale

8. (1) A person who consumes or uses gasoline originally acquired by that person at a sale other than a retail sale and in respect of which no tax has been paid under this Act shall, as soon as that person consumes or uses that gasoline, pay to the Crown a tax in the amount that would be payable if the gasoline had been purchased at a retail sale in the province by that person.

(2) Where a person who is not a collector acquires tax-exempt gasoline for resale, that person shall report that fact to the minister.

(3) Where a person makes a report to the minister under subsection (2) and

(a) sells a quantity of that gasoline for use in an internal combustion engine in circumstances in which it would stop being tax-exempt gasoline; or

(b) consumes or uses a quantity of that gasoline in an internal combustion engine in circumstances in which it would stop being tax-exempt gasoline,

that person shall collect and pay, or pay, as the case may require, to the Crown a tax in the amount that would be payable if the gasoline had been purchased in the first instance by that person at a retail sale in the province.

1978 c39 s6

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Tax

9. (1) Notwithstanding section 3, an interjurisdictional carrier shall pay to the Crown a tax which shall be calculated by the following formula:

where

$tp = \underline{kms} \times tr\ d/l$

tp = the tax payable by the interjurisdictional carrier;

kms = the number of kilometres travelled within the province by the fleet during the reporting period;

d = the total kilometres travelled in all jurisdictions by the fleet during the reporting period;

l = the total number of litres of gasoline consumed by the fleet during the reporting period; and

tr = the tax rate per litre of gasoline set out at paragraph 3(1)(b).

(2) For the purpose of collecting the tax referred to in subsection (1), an interjurisdictional carrier who acquires gasoline at a retail sale in the province shall pay tax to the Crown as required in section 3.

(3) Where the amount of tax paid under subsection (2) during the reporting period exceeds the amount due under subsection (1), the minister may refund the difference to the interjurisdictional carrier or may pay over the difference to another jurisdiction which has entered into an agreement with the minister under section 77.

(4) Where the amount of tax paid under subsection (2) is less than the amount due under subsection (1), the interjurisdictional carrier shall pay the difference in amount to the minister at the time prescribed by regulation for filing the return for that reporting period.

(5) This section shall not apply in relation to gasoline consumed by an interjurisdictional motor vehicle operating under a single trip registration granted as prescribed by regulation.

1993 c32 s3

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No double tax

10. Sections 3 to 8 do not authorize the imposition of a tax under this Act more than once upon the same gasoline.

1978 c39 s8

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Records

11. (1) A person who acquires gasoline for that person's own consumption shall, when required to do so by the minister, maintain records, in a form satisfactory to the minister, that show the details of the purchases and consumption of the gasoline.

(2) Records kept under subsection (1) shall be made available to an inspector at reasonable times by the person maintaining them.

1978 c39 s9

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Estimating tax in default and result

12. (1) When a collector, deputy collector or taxpayer fails to make a return or payment as required by this Act or the regulations, or the returns by a person are not substantiated by that person's records, the minister may estimate the amount of tax collected by the collector or deputy collector or payable by the taxpayer, and the amount so estimated is considered to be the tax collected or payable by that person.

(2) The collector, deputy collector or taxpayer shall pay the amount of tax estimated under subsection (1) to the Crown.

(3) The minister may, by written notice either mailed or served on the collector, deputy collector or taxpayer or his or her heirs, administrators, executors or assigns, require the collector, deputy collector or taxpayer to pay over to the Crown, or otherwise account for, the amount estimated under subsection (1) within 30 days after the date on which the notice is mailed or served.

1978 c39 s10

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Rep. by 1994 c5 s2

13. [Rep. by 1994 c5 s2]

1994 c5 s2

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Rep. by 1994 c5 s2

14. [Rep. by 1994 c5 s2]

1994 c5 s2

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Power to issue licences

15. (1) The minister may issue to a person

(a) a retailer licence authorizing that person to sell or keep gasoline for sale directly to retail purchasers at that outlet only as may be specified in that licence; or

(b) a wholesaler licence authorizing that person to sell or keep gasoline for sale otherwise than directly to retail purchasers.

(2) Where in the minister's sole discretion the minister considers it desirable to do so, the minister may issue both a retailer licence and a wholesaler licence to a person.

(3) The minister may, for cause, refuse to issue a licence to a person.

(4) [Rep. by 1993 c53 s11(2)]

1978 c39 s13; 1983 c55 s1; 1993 c53 s11

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Application for licences

16. An application for a licence must be made to the minister on a form to be supplied by the minister and be accompanied by the fee that may be prescribed by the minister in respect of the licence applied for.

1978 c39 s14; 1997 c13 s25

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Power to suspend, etc.

17. (1) The minister may, for cause,

(a) suspend or cancel a licence;

(b) limit the operation of a licence as to the kind of gasoline to be sold by the licensee or as to the location where gasoline may be sold or apply both of those limitations in respect of the operation of a licence; or

(c) limit the operation of a licence in another manner.

(2) Where the holder of a retailer licence under this Act operates an electronic or mechanical amusement device in contravention of the *Lotteries Act* the minister may cancel or suspend that person's retailer licence.

(3) Where the holder of a retailer licence under this Act is guilty of an offence under section 68.1 of the *Tobacco Tax Act* , the minister shall cancel or suspend that person's retailer licence.

(4) Where a person who applies for or holds a licence issued under this Act has been convicted of an offence under section 124.1 of the *Liquor Control Act* , the minister shall refuse to issue or shall cancel or suspend that person's licence.

1978 c39 s15; 1992 c44 s1; 1993 c52 s12; 1994 c34 s10

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Registration

17.1 (1) An interjurisdictional carrier shall not operate or allow another person to operate an interjurisdictional motor vehicle in the province unless

(a) that vehicle is registered with the minister as prescribed by regulation; and

(b) there is displayed in or on the interjurisdictional motor vehicle in the manner prescribed by regulation, valid plates, stickers or markers issued under the regulations.

(2) An application for registration shall be accompanied by the fee prescribed by the minister and information that may be prescribed by regulation.

(3) The minister may, for cause, suspend, cancel, place conditions upon or refuse to grant registration.

(4) Registration shall expire on a date prescribed by regulation.

(5) Where an interjurisdictional carrier no longer uses a registered interjurisdictional motor vehicle or sells, transfers, exchanges or disposes of an interjurisdictional motor vehicle, registration of that vehicle shall cease.

(6) Where registration ceases under subsection (5), the evidence of registration issued with regard to that vehicle shall be returned to the minister within 15 days of the date of that registration cessation.

1993 c32 s4; 1997 c13 s25

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Saving provision

18. (1) Nothing in this Act requires a person to obtain either a retailer or wholesaler licence merely because that person sells furnace oil, stove oil, kerosene, naphtha, butane gas, propane gas or liquefied petroleum gas for purposes other than use in the generation of power in internal combustion engines.

(2) A person mentioned in subsection (1) shall not rebrand products described in subsection (1) and sell them for consumption in internal combustion engines, whether as taxable gasoline or otherwise, unless that person is in possession of a wholesaler licence issued under section 15.

1978 c39 s16; 1983 c55 s2

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Prohibited sales of gasoline

19. (1) A person shall not offer for sale, keep for sale, or sell gasoline in the province, except under the authority conferred by a licence issued to that person.

(2) A wholesaler shall not sell gasoline at a retail sale, unless the wholesaler also holds a valid retailer licence.

(3) A wholesaler shall not sell gasoline to a person for resale at retail sale, unless that person holds a valid retailer licence issued to that person.

(4) A retailer shall not sell or keep gasoline for retail sale unless the gasoline has been purchased by

that retailer from a wholesaler or another retailer.

(5) A wholesaler shall not sell to a person a smaller quantity of gasoline than 180 litres.

1978 c39 s17

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Retailer to post licence

20. A retailer shall post the retailer's licence and keep it posted in a conspicuous place at the retail outlet or in other places that may be prescribed by the regulations.

1978 c39 s18

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Accounts and returns

21. (1) A licensee shall keep accounts in the form prescribed

(a) of all purchases, sales, deliveries, rebrandings, transfers and losses of all grades of gasoline by that licensee in the province;

(b) of sales and deliveries by that licensee to points outside the province;

(c) of sales and deliveries of tax-exempt gasoline; and

(d) of quantities on hand and quantities used in the province by that licensee,

and a licensee shall make returns to the minister in the form, in the manner, and at the time prescribed by the regulations.

(1.1) An interjurisdictional carrier shall keep accounts, receipts and records and make returns as prescribed by regulation.

(2) The minister may require a licensee, person supplying gasoline to a licensee or another person or a class of licensees or persons to keep those records and accounts in the form that the minister may prescribe.

(3) A licensee and an interjurisdictional carrier shall keep on file at their outlet or place of business bills, receipts or invoices covering purchases of gasoline made by the licensee or interjurisdictional carrier.

1978 c39 s19; 1993 c32 s5

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Confidentiality

22. (1) The minister may authorize the persons who may receive returns under this Act and he or she shall not authorize a person to receive those returns unless it is necessary to do so for the purpose of this Act.

(2) A person who has custody of or control over information, records or returns under this Act shall

not disclose that information or those records or returns to another person except

(a) in the course of administering or enforcing this Act or another taxation Act;

(b) in the course of administering or enforcing the *Liquor Control Act* or the *Liquor Corporation Act* ;

(c) under an agreement that

(i) is between the government of the province and another government,

(ii) relates to the administration or enforcement of a taxation Act, and

(iii) provides for the disclosure of information, returns and records to and the exchange of similar information, returns and records with that other government; or

(d) for the purpose of the compilation of statistical information by the government of the province or the Government of Canada.

(3) Notwithstanding subsection (2), the minister may communicate to a collector information on the type of gasoline sold in the province and on the identity of the sellers.

1993 c52 s12

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Automatic revocation of licence

23. Where a licensee stops carrying on a business of selling gasoline in respect of which a licence was issued to the licensee under this Act, that licence is automatically revoked and shall be returned, by the person to whom it was issued or that person's personal representative, to the minister within 15 days of the date that business stops being carried on.

1978 c39 s21

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Collection agreements

24. (1) The minister may enter into an agreement with a person appointing that person an agent of the minister for the collection of the tax imposed by this Act.

(2) The tax received by a collector shall be accounted for and remitted to the minister at the time and in the manner prescribed by the regulations.

(3) The minister may pay collectors or retailers the remuneration or allowance that may be prescribed by the regulations.

1978 c39 s22; 1983 c55 s4

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Levying the tax

25. (1) At the time of a sale of gasoline to a retail purchaser the person making the sale shall levy and collect the tax imposed by this Act and shall, in accordance with the regulations, pay over the tax so collected to the collector from whom the gasoline was acquired or, where the minister so requires, directly to the minister.

(2) Where money by way of tax is collected on gasoline that was sold to a retail purchaser but acquired by the seller otherwise than from a collector, that money shall be paid over to the minister at the time and in the manner prescribed by the regulations.

(3) A person selling gasoline to a retail purchaser shall, on the request of the retail purchaser, deliver to the retail purchaser an invoice showing the number of litres of gasoline sold to the retail purchaser and the amount of the tax paid.

1978 c39 s23; 1983 c55 s5

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Liability for tax, penalties, etc.

26. (1) A person who collects or is required to pay money by way of tax under this Act holds that money in trust for the Crown and shall pay over the money in the manner and at the time prescribed by the regulations.

= = = [subsections (1.1) - (1.9) to be proclaimed] = = = = =

(1.1) A collector who collects money by way of tax under this Act shall deposit the money in a trust account maintained for that purpose with a financial institution authorized by law to accept deposits and shall pay over to the minister the money deposited to the trust account in the manner and at the time prescribed by the regulations.

(1.2) Where a corporation fails to deposit money collected by way of tax into a trust account maintained for that purpose, the directors of the corporation, at the time the corporation was required to deposit the money, are jointly and individually liable, together with the corporation, to pay that amount.

(1.3) A director of a corporation is liable under subsection (1.2) only where

(a) a certificate for the amount of the corporation's liability referred to in that subsection has been filed under section 29 and execution for that amount has been returned unsatisfied in whole or in part;

(b) the corporation has begun liquidation or dissolution proceedings or has been dissolved and the amount of the corporation's liability referred to in subsection (1.2) has not been paid within 6 months after the minister receives a notice of intent to dissolve under section 337 of the *Corporations Act* or after the commencement of liquidation or dissolution proceedings; or

(c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* (Canada) and a claim for the amount of the corporation's liability referred to in subsection (1.2) has not been paid within 6 months after the date of the assignment or receiving order.

(1.4) A director of a corporation is not liable for a failure under subsection (1.2) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(1.5) The minister may assess a person for an amount payable by the person under this section and, where the minister sends a notice of assessment, section 12 applies, with the necessary changes.

(1.6) An assessment under subsection (1.5) of an amount payable by a person who is a director of a corporation shall not be made more than 4 years after the person last ceased to be a director of the corporation.

(1.7) The liability of a director under subsection (1.2) is for the total amount owing by the corporation and is not reduced by a proposal respecting or restructuring of or discharge of the liability of the corporation under the *Bankruptcy and Insolvency Act* or other legislation.

(1.8) Where a director of a corporation pays an amount in respect of a corporation's liability referred to in subsection (1.2) in liquidation, dissolution or bankruptcy proceedings, the director is entitled to the same priority as the Crown would have been entitled to had the amount not been paid, subject to the Crown's liability being satisfied, and, where a certificate that relates to the amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, and the minister is empowered to make that assignment.

(1.9) A director who satisfies a claim under this section is entitled to contribution from the other directors who were liable for the claim.

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(2) The amount of tax collected or required to be paid under this Act and not paid over as required under subsection (1)

(a) is recoverable by action in a court as a debt due to the Crown; and

(b) until paid, is a 1st lien on the entire assets of the estate of the person who collected it or of the person required to pay the tax and has priority over all other claims of a person.

(3) Penalties or interest imposed under this Act,

(a) is recoverable with costs by action in the name of the minister in a court as a debt due to the Crown; and

(b) until paid is a 1st lien upon the entire assets of the estate of the person owing the sum, and has priority over all other claims of a person.

1978 c39 s24; 1992 c54 s1; 1993 c32 s6

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Purchaser's liability for tax

27. (1) The retail purchaser and other persons on whom the tax is imposed by this Act is and remains liable for the tax until it has been collected.

(2) Where a person selling gasoline to a retail purchaser fails to collect the tax, that person shall immediately notify the minister.

(3) The tax may be recovered from the retail purchaser, or another person on whom the tax is imposed, by action in a court as a debt due to the Crown.

1978 c39 s25

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Action to recover

28. (1) The amount of the tax may be recovered with costs, by action in the name of the minister in a court, as a debt due to the Crown.

(2) An action under subsection (1) shall be tried without a jury and the court may make an order as to costs in favour of or against the Crown.

1978 c39 s26

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Certificate of default

29. (1) Where default is made by a person in the payment of a tax or a part of a tax that is due or that has been collected on behalf of the Crown under this Act, the minister may issue a certificate stating the amount due and remaining unpaid to the Crown and the name of the person by whom it is payable, and file the certificate with the Registrar of the Supreme Court.

(2) When a certificate is filed with the Registrar of the Supreme Court, it is of the same effect and all proceedings may be taken on the certificate, as if it were a judgment of the Trial Division for the recovery of the amount stated in the certificate against the person named in the certificate.

1978 c39 s27

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Demand on 3rd party

30. (1) Where the minister has knowledge that a person is or is about to become indebted to a taxpayer, a retailer or a collector, the minister may demand of that person that the money otherwise payable by that person to the taxpayer, retailer or collector be in whole or in part paid to the minister on account of the liability of that taxpayer, retailer or collector under this Act.

(2) The receipt of the minister for money paid by a person in response to a demand made under subsection (1) constitutes a sufficient discharge of the liability of that person to the taxpayer, retailer or collector to the extent of the amount set out in the receipt.

(3) A person discharging a liability to a taxpayer, retailer or collector after receipt of a demand made under subsection (1) is personally liable to the Crown in an amount that is the lesser of

(a) the liability discharged as between that person and the taxpayer, retailer or collector; and

(b) the liability of the taxpayer, retailer or collector for the money due under this Act or that has been collected on behalf of the Crown, but not remitted, including penalties.

1978 c39 s28

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Onus of proof

31. In a prosecution for failure to pay the tax or to collect or remit the tax and in an action to recover money for which a person is liable under this Act, an affidavit by an officer of the Department of Finance that the office has charge of the appropriate records and that after careful examination and search of those records the officer has been unable to find a record that the tax has been paid or collected or remitted is, in the absence to the contrary, proof that the tax or money has not been paid, collected or remitted to the minister.

1978 c39 s29

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Effect of fine or penalty

32. The liability of a person for the payment of a tax under this Act or the liability to remit the tax collected is not affected by the fact that a fine or penalty has been imposed on or paid by that person in respect of a contravention of this Act.

1978 c39 s30

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Effect of default

33. (1) Where a collector fails to make the returns required by the regulations or to pay over to the minister a tax collected by the collector at the time prescribed by the regulations, the minister may cancel the agreement with and revoke the appointment of that collector.

(2) Where an interjurisdictional carrier

(a) does not make returns required under this Act or does not pay to the minister a tax or fee required to be paid by that interjurisdictional carrier at the time prescribed by regulation for that payment; or

(b) does not keep the accounts, receipts and records required under this Act,

the minister may suspend, cancel, place conditions upon or refuse to grant registration to that interjurisdictional carrier.

1978 c39 s31; 1993 c32 s7

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Bulk sale of outlet

34. (1) A person shall not dispose of gasoline through a sale in bulk without first obtaining a certificate in duplicate from the minister

(a) that all taxes collectable or payable by that person have been paid; or

(b) that an arrangement satisfactory to the minister has been entered into with that person for the payment of the taxes or for receiving their payment.

(2) Where a person purchases the gasoline of another person through a sale in bulk, the purchaser is liable, in addition to a liability imposed on the purchaser by this Act for payment of the tax on stock acquired by the purchaser through that sale, for payment of a tax then collected and due by that other

person but not remitted to the minister, unless the purchaser obtains from that person a copy of the certificate issued by the minister under subsection (1).

(3) In this section, "sale in bulk" and "stock" have the same meaning as in the *Bulk Sales Act*.

1978 c39 s32

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Application of Financial Administration Act

35. A person who collects the tax imposed under this Act shall be considered to act subject to sections 77 to 80 and section 83 of the *Financial Administration Act*, and for the purposes of those sections that person is a person who has received money on behalf of the Crown.

1978 c39 s33

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Eligibility of member of House of Assembly

36. Notwithstanding anything contained in another Act, a retailer or collector collecting a tax or a collector receiving a remuneration or allowance provided under this Act is not, by reason only of his or her so collecting the tax or receiving a remuneration or allowance, ineligible to be elected as a member of or to sit and vote in the House of Assembly.

1978 c39 s34

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Preservation of records

37. (1) A person required by this Act or the regulations to keep accounts, books or records shall preserve all those accounts, books and records until the minister consents in writing to their destruction.

(2) For the purpose of subsection (1), a bill, receipt or invoice referred to in subsection 21(3) is considered to be a record required to be kept by this Act.

1978 c39 s35

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Marking gasoline

38. For the purposes of distinguishing gasoline used or to be used for specified purposes, the minister may order a kind of gasoline to be marked in accordance with the regulations.

1978 c39 s36

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Gasoline delivery

39. The driver of a vehicle engaged in transporting or delivering gasoline

(a) shall have in his or her possession in that vehicle at all times an invoice or bill of lading respecting the products being carried on or by the vehicle and correctly identifying each product and the quantity of each product loaded;

(b) shall, when requested to do so by an inspector, produce the invoice or bill of lading mentioned in paragraph (a); and

(c) shall not place tax-exempt gasoline in the storage tank of an internal combustion engine unless the owner or operator of the engine produces a tax-exempt permit or certificate issued under the regulations that authorizes the use of tax-exempt gasoline.

1978 c39 s37

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Breaches of Act

40. (1) A person contravenes this Act who

(a) sells, keeps with intent to sell, purchases, uses or keeps with intent to use marked gasoline for a purpose other than the purpose in respect of which it is marked under the regulations;

(b) adds to or introduces into marked gasoline a substance, compound or preparation, or submits marked gasoline to a mechanical, chemical or other process, for the purpose of removing the marking colouring from the gasoline or of making the colouring invisible;

(c) mixes or combines with marked gasoline another type or grade of gasoline; or

(d) marks gasoline in a manner other than that prescribed by the regulations.

(2) A person contravenes this Act who has marked gasoline, or a trace of the dye used to mark gasoline under section 38, in the fuel system of motorized equipment when marked gasoline is not authorized under this Act or the regulations for consumption in that motorized equipment.

(3) A person who contravenes this Act as described in subsection (2) is guilty of an offence and is liable on summary conviction to a fine of not more than $5,000 and not less than $100 or to imprisonment for a term of not more than 6 months or to both a fine and imprisonment.

1978 c39 s38; 1983 c55 s6; 1989 c6 s4

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No defence from prior breach

41. The fact that marked gasoline or a trace of the dye used to mark gasoline that was found in a motor vehicle, ship, boat, aircraft or other motorized equipment is the same gasoline or trace that was found in the motor vehicle, ship, boat, aircraft or other motorized equipment on another occasion that constituted a contravention of this Act is not a defence in a prosecution for a subsequent contravention of this Act if a period of more than 24 hours has elapsed since taking a sample of gasoline from that motor vehicle, ship, boat, aircraft or other motorized equipment.

1978 c39 s39

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Appointment of inspectors

42. The minister may appoint or designate those inspectors, classes of inspectors, officers and other persons that the minister considers necessary for the administration of this Act.

1978 c39 s40; 1993 c32 s8

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Powers of inspectors

42.1 (1) Where it is reasonably necessary for the purpose of ensuring compliance with this Act and the regulations, an inspector, officer or other person appointed or designated by the minister under section 42 may, at reasonable times without a warrant,

(a) enter a business premises, work site, storage facility or bulk delivery site and inspect the contents of a tank containing gasoline including the gasoline supply tank of an internal combustion engine; and

(b) for the purpose of analysis, take a sample of gasoline not exceeding a total volume of one litre per tank.

(2) An inspector, officer or other person acting under subsection (1) may detain a vehicle or other mechanized equipment for the purpose of performing the inspection or obtaining the sample referred to in that subsection.

(3) A sample taken under subsection (1) shall be disposed of as the minister directs.

2002 c15 s1

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Powers of inspectors

43. (1) A licensee and another person having gasoline in his or her possession or keeping gasoline for sale shall permit in accordance with this section an inspector, officer or other person appointed or designated under section 42 to enter upon the premises and shall disclose and make available for examination by that inspector all books, invoices, letters and documents relating to sales, purchases, use or consumption of gasoline.

(2) An inspector may enter at a reasonable time the business premises occupied by a person, or the premises where the records of a person are kept so long as it is reasonably necessary to determine compliance with this Act

(a) to inspect, audit or examine books of account, records or documents; or

(b) to ascertain the quantities of gasoline on hand or sold by that person or on those premises,

and the person occupying or in charge of the premises shall answer all questions concerning those matters and produce those books of account, records or documents that may be required by the inspector.

(3) Where an inspector believes on reasonable grounds that a person has contravened this Act or the regulations the inspector may with a warrant issued under subsection (4) enter and search the premises, motor vehicle, ship, boat, aircraft or other mechanized equipment or storage or bulk delivery facility, and examine and take a sample of gasoline and examine books, documents, correspondence or records in relation to the investigation.

(4) A Provincial Court judge or justice of the peace who is satisfied by information upon oath or affirmation that there are reasonable grounds for believing that there is on a premises, motor vehicle, ship, boat, aircraft or other mechanized equipment or storage or bulk delivery facility anything that there are reasonable grounds to believe will give evidence with respect to an offence under this Act may issue a warrant authorizing an inspector named in the warrant to enter and search the premises, motor vehicle, ship, boat, aircraft, other mechanized equipment or storage or bulk delivery facility, and subject to those conditions that may be specified in the warrant

(a) make those inquiries and copies that are considered necessary;

(b) seize a sample of gasoline for evidence or for analysis; or

(c) seize the whole amount of gasoline and bring it to a place of safe custody and keep it there until the court by its judgment has disposed of it, after which, if it is confiscated, the inspector shall dispose of it as the minister directs.

(5) Where an inspector seizes gasoline under subsection (4), he or she may also seize and detain in safe custody a motor vehicle, ship, boat, aircraft or other motorized equipment in which that gasoline was found or carried until

(a) the matter has been disposed of and a tax required to be paid under this Act has been paid; or

(b) a charge has been laid under this Act and a deposit or bond in an amount satisfactory to the minister has been provided by the owner or operator of a motorized equipment so detained.

(6) Notwithstanding subsection (3), an inspector may exercise the power of search referred to in that subsection without a warrant issued under subsection (4) if the conditions for obtaining the warrant exist but because of urgent circumstances it would not be practical to obtain the warrant.

(7) For the purpose of subsection (6), urgent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or the loss or destruction of evidence.

1985 c11 s45

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Powers re interjurisdictional carrier

43.1 (1) For the purpose of ascertaining whether an interjurisdictional motor vehicle is registered or a tax or fee has been paid under this Act, an inspector may

(a) demand proof of registration; and

(b) stop, enter and inspect an interjurisdictional motor vehicle.

(2) Where an inspector, on reasonable grounds believes that an interjurisdictional carrier has not paid a tax or fee required to be paid by the interjurisdictional carrier under this Act, he or she may stop

and detain an interjurisdictional motor vehicle operated by or for that interjurisdictional carrier until the tax or fee has been paid.

(3) Where an interjurisdictional carrier referred to at subsection (2) is carrying goods or passengers, the inspector shall allow the vehicle to proceed to its destination and the inspector may require the operator of the vehicle to report to another inspector at that destination and that other inspector may detain the vehicle following its unloading or discharge of passengers until the tax or fee has been paid.

(4) An operator of a vehicle who does not comply with the reasonable demands or instructions of an inspector under this section commits an offence and is liable on summary conviction

(a) for a 1st offence, to a fine of not less than $450 and not more than $800 or to imprisonment for not more than 10 days or to both a fine and imprisonment; and

(b) for each subsequent offence to a fine of not less than $800 and not more than $1,000 or to imprisonment for not more than 20 days or to both a fine and imprisonment.

1993 c32 s9

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Interference

44. A person contravenes this Act who interferes with or hinders an inspector conducting a search or making an investigation under this Act or exercising a right or discharging a duty conferred or imposed on him or her by this Act or the regulations.

1978 c39 s42

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Confiscation

45. When in respect of gasoline seized under this Act a person is convicted of an offence under this Act or the regulations, the gasoline may be declared confiscated to the Crown by the court recording the conviction.

1978 c39 s44

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Actions against inspectors

46. Where a court before which a proceeding is taken against an inspector for anything done by him or her under this Act or the regulations is satisfied that there was probable cause for the action of the inspector, and that his or her action was not malicious, a verdict or judgment shall not be given against the inspector for more than $0.05 damages or for the costs of suit.

1978 c39 s45

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Evidence

47. In a prosecution under this Act or the regulations,

(a) it is proof, in the absence of evidence to the contrary, that a liquid is gasoline and was used to propel a motor vehicle, ship, boat or other motorized equipment when it is established that it was found in the fuel tank or an auxiliary tank or a part of the fuel supply system of that motor vehicle, ship, boat or other motorized equipment; and

(b) a certificate by an analyst in the employment of the government of the Crown in right of Canada or of the Crown in right of the province certifying the ingredients of the gasoline or that the gasoline is marked gasoline or contains marked gasoline is, in the absence of evidence to the contrary, proof of the facts stated in the certificate and of the authority of the person giving the certificate without proof of his or her appointment or signature.

1978 c39 s46

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Regulations

48. (1) The Lieutenant-Governor in Council may make regulations

(a) prescribing the manner in and the times at which the tax collected by collectors or payable by other persons is to be paid to the minister;

(b) prescribing the remuneration or allowance to be paid to collectors or retailers, the time and the manner of and conditions precedent to the payment of the remuneration or allowance;

(c) requiring the providing of surety bonds by a person who under this Act is required to collect tax and prescribing the amount of the bonds;

(d) providing for the accounting for a sum of money collected by collectors and collected or payable by other persons under this Act and regulating the time and manner of the accounting;

(e) prescribing the returns and statements to be made by licensees and other persons, the information to be given in the returns and statements, and by whom and in what manner they are to be made;

(e.1) prescribing the information required for registration;

(e.2) prescribing classes of registration;

(e.3) [Rep. by 1997 c13 s25]

(e.4) prescribing the time of expiration of registration;

(e.5) prescribing the cards, decals or other evidence of registration to be carried or displayed by an interjurisdictional carrier and the manner of displaying those cards or decals;

(e.6) prescribing reporting periods, the manner in which returns and reports shall be filed and tax shall be paid or remitted;

(e.7) prescribing the manner in which an inspector may detain an interjurisdictional motor vehicle under section 43.1, the reports and documentation required and the procedures to be followed;

(e.8) prescribing all aspects of registration including exemptions;

(f) prescribing the date before which all applications for licences may be made and the expiry date of licences;

(g) declaring that the use of gasoline for a purpose specified in the regulations is to entitle the user to a refund of tax in the method and to the extent and under the conditions specified in the regulations;

(g.1) prescribing the circumstances under which rebates of tax may be granted or denied and setting restrictions on the granting or denying of rebates of tax;

(h) exempting from this Act gasoline used for a purpose specified in the regulations;

(i) providing that gasoline of a prescribed quantity brought into the province by a tourist is to be exempted from this Act and prescribing the quantity to and the condition under which the exemption is to apply;

(j) exempting a class of persons from the payment of the tax;

(k) authorizing and regulating tax exemption permits or certificates to be issued to persons or classes of persons exempted, by this or another Act or otherwise, from the payment of tax under this Act and prescribing the contents of the permits and certificates, the periods for which they may be issued, and authorizing the issue of the permits and certificates by the minister or other persons;

(l) authorizing the issue of tax-exemption permits or certificates, subject to those rules that the minister may prescribe, to refuse to issue the permits or certificates and to suspend or cancel the permits or certificates in the circumstances that the minister may prescribe;

(m) prescribing the circumstances under which refunds and interest may be granted or denied and setting restrictions on the granting or denying of refunds and interest;

(m.1) prescribing rates and methods of calculating interest, documents, records, times and the manner of paying refunds, interest and making other payments;

(n) prescribing the duties of inspectors;

(o) providing for the holding of inquiries into the operation of this Act and into a charge or complaint that a person has contravened this Act or the regulations, or has made a false statement in a return or statement required to be made by this Act or the regulations, or into another matter arising in the administration of this Act, and providing that the person holding that inquiry has the powers that may be conferred upon a commissioner under the *Public Inquiries Act,* including the power to take evidence under oath or affirmation;

(p) designating the places at which retailers are to post and keep licences posted;

(q) [Rep. by 1997 c13 s25]

(r) requiring licensees to indicate the grade and price of gasoline offered for sale;

(s) prescribing the octane classification of gasoline to be marked;

(t) prohibiting the marking of gasoline of an octane classification other than that prescribed by the regulations;

(u) prohibiting the treatment of gasoline by the addition of a substance, compound or preparation, or by submitting it to a mechanical, chemical or other process, or in another manner, so as to give it the appearance of marked gasoline;

(v) prescribing the type, ingredients and other specifications of the colouring to be used to mark gasoline and the manner in which the gasoline is to be marked;

(w) prescribing the persons who may mark gasoline and the time and manner of the marking;

(x) prescribing the minimum and maximum amount of gasoline that may be marked by a person at a time and the amount of gasoline that may be marked by that person during a period;

(y) prescribing the manner in which marked gasoline may be sold;

(z) requiring that all persons who mark gasoline or deal with marked gasoline file reports and statements with the minister, and prescribing the periods to be covered by the reports and statements and the times of filing them and the contents of the reports and statements;

(aa) [Rep. by 1992 c16 s10]

(bb) generally, to give effect to the purpose of this Act.

(2) Regulations made under this section exempting gasoline from the tax imposed under section 4 may be made with retroactive effect to July 1, 1989.

1978 c39 s47; 1981 c34 s3; 1982 c15 s2; 1983 c5 s3; 1983 c55 s8; 1989 c6 s5; 1992 c16 s10; 1993 c32 s10; 1993 c53 s11; 1994 c5 s3; 1997 c13 s25

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Fees and forms

48.1 The minister may set fees and prescribe forms for the purpose and administration of this Act.

1997 c13 s25

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Rep. by 1995 c22 s2

49. [Rep. by 1991 c7 s4]

1982 c15 s3; 1983 c23 s9; 1991 c7 s4

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Penalty

50. (1) Where a person sells gasoline at a retail sale and fails to collect a tax that by this Act he or she is required to collect, that person is, irrespective of a penalty imposed by this Act and without the interposition of a court, liable to, and shall pay to the minister, a penalty in an amount equal to the total of

(a) the amount of the loss sustained by the Crown because of the failure of that person to so collect; and

(b) 10% of the amount of that loss, unless the minister decides not to require that 10%.

(2) Subsection (1) applies whether or not the person who sells the gasoline is a retailer.

(3) In a case referred to in subsection (1), the minister may make an estimate of the amount of the loss sustained by the Crown and the amount so estimated shall, for the purpose of this Act, be considered to be the actual loss so sustained.

(4) The minister may, by written notice either mailed to or served on the person concerned, require that person to pay to the minister, or otherwise account for, the penalty referred to in subsection (1) within 30 days after the day on which the notice is mailed or served.

1978 c39 s48

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Penalty re marked gasoline

51. (1) Where a person sells marked gasoline to a purchaser other than a person entitled to acquire marked gasoline, that person is, irrespective of another penalty imposed by this Act and without the interposition of a court, liable to, and shall pay to the minister, a penalty in an amount equal to the total of

(a) the amount of tax that would have been paid had taxable gasoline been sold to the purchaser; and

(b) 10% of the amount determined under paragraph (a), unless the minister decides not to require that amount.

(2) In a case referred to in subsection (1), the minister may make an estimate of the amount of the tax that would have been paid had taxable gasoline been sold to the purchaser and the amount so estimated shall, for the purpose of this Act, be considered to be the amount of the tax payable.

(3) The minister may, by written notice either mailed to or served on the person concerned, require that person to pay over to the minister, or otherwise account for, the penalty referred to in subsection (1) within 30 days after the day on which the notice is mailed or served.

(4) For the purpose of this section, a "person entitled to acquire marked gasoline" refers to

(a) a person who is the holder of a valid exemption permit or valid exemption certificate issued under the regulations;

(b) a person authorized to purchase gasoline for a department referred to in paragraph 13(1)(a);

(c) a person acquiring a product described in paragraph 13(1)(e) or any gasoline or product described in paragraph 13(1)(f); or

(d) a person who is the holder of a valid licence issued under section 15.

1978 c39 s49; 1983 c55 s9

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Licensee considered consumer

52. Where under section 21 a licensee

(a) accounts for an amount of tax-exempt gasoline that is less than the total amount of tax-exempt gasoline delivered to that licensee for sale; or

(b) does not, to the satisfaction of the minister, account for the total amount of tax-exempt gasoline delivered to that licensee for sale,

the licensee is, irrespective of another penalty imposed by this Act and without interposition of a court, liable to, and shall pay to the minister, a penalty in an amount equal to the total of

(c) the amount of tax that would have been paid

(i) in the case described in paragraph (a), on the amount of gasoline equal to the difference between the 2 amounts, and

(ii) in the case described in paragraph (b), on the amount of gasoline not satisfactorily accounted for,

as if that gasoline had not been tax-exempt gasoline; and

(d) 10% of the amount determined under paragraph (c), unless the minister decides not to require that amount.

1983 c55 s10

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Additional penalty

53. (1) A person who

(a) fails to remit within the time required by the minister or collector money collected under this Act by way of tax; or

(b) fails to pay a tax that the person is required to pay under this Act

is, irrespective of a penalty imposed by this Act and without the interposition of a court, liable to, and shall pay to the minister, a penalty in the amount equal to 10% of the amount due.

(2) In a case referred to in subsection (1), the minister may make an estimate of the amount of the penalty under that subsection and the amount so estimated shall, for the purpose of this Act, be considered to be the amount of that penalty.

(3) The minister may, by written notice either mailed to or served on the person concerned, require that person to pay over to the minister, or otherwise account for, the penalty imposed under subsection (1) within 30 days after the date on which the notice is mailed or served.

1978 c39 s50

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Penalty for default on returns

54. Where a person fails to make a return required under this Act or the regulations in the manner and within the time provided under this Act or the regulations, the minister may impose upon that person, and that person shall pay to the minister, a penalty of not more than $100.

1978 c39 s51

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Interest

55. (1) Where a person does not pay or pay over tax in the time and manner required, interest shall be levied upon that tax at the rate and in the manner prescribed by the regulations, and the regulations may provide for a minimum amount upon which interest shall be levied.

(2) The minister may, by written notice either mailed to or served on the person concerned, require that person to pay over to the minister, or otherwise account for, interest levied under subsection (1) within 30 days after the day on which the notice is mailed or served.

(3) Where a certificate is issued under section 29, interest under subsection (1) shall continue to be added to the amount of the tax payable as contained in the certificate.

1978 c39 s52; 1981 c71 s1; 1983 c55 s11; 1992 c16 s11

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Refunds

55.1 (1) Where a person pays or pays over to a deputy collector, a collector or the minister an amount which exceeds the amount of tax required to be paid, the minister may refund to that person the amount of the overpayment, together with interest, at the rate and in the manner prescribed by the regulations.

(2) Notwithstanding subsection (1), where a person owes money to the Crown under this or another Act, the minister shall deduct the amount owing from the refund and shall inform the person of the set-off.

(3) Notwithstanding subsection (1), the minister shall not make a payment under this section unless the overpayment is disclosed to or by the minister within 3 years from the date on which that overpayment was made.

(4) Notwithstanding subsection (1), refund and interest payments under this section may be restricted or denied as prescribed by the regulations.

(5) Money paid under this section shall be paid out of the Consolidated Revenue Fund and shall be accounted for as a reduction of revenues under this Act.

1992 c16 s12

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Review re licence

56. Where a person is dissatisfied by

(a) a refusal to issue a licence under section 15;

(b) the cancellation or suspension of a licence under section 17;

(c) a refusal of registration; or

(d) the suspension, cancellation of or attachment of conditions to registration

that person may apply to the minister for a review.

(2) The minister after considering an application under subsection (1) shall confirm or alter the decision to refuse, cancel, suspend or attach conditions to a licence or registration and notify the applicant accordingly.

1993 c32 s11

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Review of estimated tax

57. (1) Where a collector or taxpayer is dissatisfied with the amount contained in an estimate of tax by the minister under section 12 or 51, he or she may, within 30 days of receiving the written notice under that section, apply to the minister for a review; and the minister, after considering the application, shall confirm, amend or revoke the estimate and notify the collector or taxpayer accordingly.

(2) A person who is dissatisfied with the assessment contained in the estimate of tax by the minister under subsection 26(1.5) may, within 30 days of receiving the written notice under that section, apply to the minister for a review. [added 1992 c54 s2 - to be proclaimed]

1978 c39 s54; 1992 c54 s2

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Review

58. (1) A person who is dissatisfied by a penalty or interest imposed under sections 50 to 55 may apply to the minister for a review of the amount fixed; and the minister, after considering the application, shall confirm or amend the amount imposed by way of penalty or interest and, where the minister is satisfied that no loss has been sustained by the Crown, revoke the imposition of a penalty or interest and notify the person accordingly.

(2) The amount of penalty or interest fixed in the notification given under this section shall for the purpose of this Act be considered to be the amount fixed by the minister.

1978 c39 s55; 1983 c55 s12

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Onus of proof

59. Proof that a notification given under section 55, 56 or 57 has been mailed or served is, in the absence of evidence to the contrary, proof that the amount stated in it is due.

1978 c39 s56

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Appeal to Trial Division

60. (1) A person may appeal to a judge of the Trial Division where

(a) that person feels aggrieved by a review under section 56;

(b) that person disputes the amount of estimated tax confirmed or amended by the minister under section 57 or his or her liability for the tax; or

(c) that person feels aggrieved by a penalty or interest as confirmed or amended by the minister under section 58.

(2) In order to appeal under subsection (1), the appellant shall, within 30 days after the notification under section 56, 57 or 58 has been mailed or served on the appellant, file in the Registry of the Supreme Court a notice of appeal.

(3) The notice of appeal under subsection (2) shall set out the grounds of the appeal; and a copy of the notice of appeal shall be served on the minister.

(4) The appellant shall, within 14 days after service of a copy of the notice of appeal under subsection (3), apply to a judge of the Trial Division for the appointment of a day for the hearing of the appeal and shall, not less than 14 days before the day appointed for the hearing, serve upon the minister a written notice of that day.

(5) The appeal and evidence brought forward by the appellant and the Crown shall be heard by the judge in a summary manner; and the judge shall, after considering all the aspects that he or she in his or her discretion considers appropriate to consider in the interests of justice, equity and fairness, decide the appeal

(a) by upholding, reducing or cancelling

(i) the suspension or cancellation of or refusal to issue a licence as confirmed or altered by the minister,

(ii) the estimate of the tax as confirmed or amended by the minister, or

(iii) the penalty or interest as confirmed or amended by the minister; or

(b) by making the other decisions that the judge considers appropriate in the circumstances.

(6) All papers and documents in the possession of the minister and affecting the matter of the appeal shall be produced before the judge on the hearing of the appeal.

(7) The costs of the appeal are in the discretion of the judge who hears the appeal and he or she may make an order respecting costs in favour of or against the Crown and may fix the amount of the costs.

1978 c39 s57; 1986 c42 Sch B; 1993 c32 s12

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Appeal to Court of Appeal

61. (1) An appeal may be taken to the Court of Appeal from a decision of a judge of the Trial Division upon a point of law raised upon the hearing before the judge.

(2) The rules governing appeals to the Court of Appeal from a decision of a judge of the Trial Division apply to appeals under this section.

1978 c39 s58: 1986 c42 Sch B

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Irregularity

62. An estimate made by the minister and confirmed or amended under section 57 shall not be varied or disallowed because of an irregularity, informality, omission or error on the part of a person in the observation of a directory provision of this Act or the regulations up to the date of the issuing of the notice of the estimate.

1978 c39 s59

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Effect of delay, etc.

63. Neither the giving of a notice of appeal by a person nor a delay in the hearing of that appeal,

(a) affects

(i) the due date of a tax or part of a tax under this Act that is the subject-matter of an appeal, or

(ii) liability for payment of a tax provided by this Act; or

(b) delays the collection of a tax,

but if the tax is set aside or reduced on appeal, the minister shall refund to the person entitled to the tax the excess of tax paid and of an additional penalty or interest paid on it.

1978 c39 s60

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Remission authorized

64. (1) Notwithstanding another Act, the minister, where the minister considers it appropriate to do so, may remit a penalty or interest imposed under sections 50 to 55.

(2) A remission under this section may be total or partial, conditional or unconditional, and may be granted whether before or after or pending a suit or proceeding for the recovery of a penalty or

interest and before or after a payment of the penalty or interest has been made or enforced by process or execution.

1978 c39 s61; 1983 c55 s13

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Application of Financial Administration Act

65. Subsections 19(3) and (4) of the *Financial Administration Act* apply, with the necessary changes, to remissions under section 64.

1978 c39 s62

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Delegation of functions

66. (1) Without affecting subsection 22(2) of the *Interpretation Act,* the Lieutenant-Governor in Council may assign to an officer of the Department of Finance designated by the Lieutenant-Governor in Council the performance of the duties and the exercise of the powers imposed or conferred on the minister under this Act.

(2) An officer to whom the performance of those duties or the exercise of those powers is assigned in accordance with subsection (1) shall perform the duties and may exercise the powers as if they were imposed or conferred on him or her by this Act.

(3) This section does not apply to a power conferred upon the minister by section 56, 57 or 58.

1978 c39 s63

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Offence: failure to keep books, etc.

67. A licensee is guilty of an offence who

(a) fails to make a return that the licensee is required to make under this Act or the regulations;

(b) fails to keep records in the form prescribed by the minister and containing the matter prescribed by this Act or the regulations;

(c) makes a false entry or statement in an account, record, book, statement or return required to be made, kept, provided or rendered under this Act or the regulations.

1978 c39 s64; 1997 c13 s25

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Offence: selling gasoline unlawfully

68. (1) A person is guilty of an offence who

(a) not being a retailer, sells gasoline to a retail purchaser;

(b) being a retailer, sells gasoline to a retail purchaser elsewhere than at the outlet specified in his or her retailer licence;

(c) being a wholesaler, sells gasoline for retail sale to a person who is not a retailer; or

(d) not being a wholesaler or retailer, sells gasoline to a retailer.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 6 months or to both a fine and imprisonment.

1978 c39 s65

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Offence: failure to keep records

69. A person who fails to preserve an account, book or record in accordance with section 37 is guilty of an offence and liable on summary conviction to a fine of not less than $100 and not more than $5,000.

1978 c39 s66

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Offence: default in collecting tax, etc.

70. (1) A person is guilty of an offence who

(a) being required by this Act or the regulations to collect the tax imposed under this Act, fails to do so; or

(b) being required by this Act or the regulations to make returns or to pay money to the minister or another person, fails to do so by the date fixed for the return or payment.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding $5,000 and to imprisonment for a term not exceeding 6 months or to both a fine and imprisonment.

1978 c39 s67

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General offence and penalty

71. A person who contravenes this Act or the regulations is guilty of an offence and, where no other penalty is provided by this Act for the offence, is liable on summary conviction to a fine of not more than $5,000 or to imprisonment for a term of not more than 6 months or to both a fine and imprisonment.

1978 c39 s68

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Application of Criminal Code

72. Sections 736 and 737 of the *Criminal Code* shall not be applied in disposing of a complaint made or in imposing punishment for an offence under this Act.

1978 c39 s69; 1979 c35 s34

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Corporate liability

73. Where a corporation is guilty of an offence under this Act, and an officer, director, employee or agent of the corporation directed, authorized, assented to, or acquiesced or participated in the commission of the offence, that officer, director, employee or agent is a party to and guilty of the offence, and is liable on summary conviction to the punishment for that offence whether or not the corporation has been prosecuted or convicted.

1978 c39 s70

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No time limitation

74. A complaint may be made and all proceedings may be taken in respect of an offence under this Act or the regulations, without a limitation of time.

1978 c39 s71

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Meters required

75. (1) The minister may require a collector or another person dealing with gasoline to install at that person's expense automatic meters or other equipment approved by the minister, and that person may use the information supplied by the approved meters or equipment to establish the quantities of gasoline refined, acquired, delivered or sold.

(2) The minister shall be notified immediately by the person who operates equipment approved under subsection (1) when meter heads are changed on the equipment and that person shall at the time report the old and new meter readings to the minister.

1978 c39 s72

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Sealed equipment

76. (1) The minister may place a seal approved by the minister or a lock on a meter or mechanical injection system, drum or receptacle containing gasoline, notwithstanding where that meter, system, drum or receptacle is located.

(2) It is a breach of this Act to remove an approved seal or lock placed on a meter, mechanical injection system, drum or receptacle without first obtaining authority from the minister to do so.

1978 c39 s73; 1983 c55 s14

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Agreements

77. The minister, with the approval of the Lieutenant-Governor in Council, may, on behalf of the province, enter into reciprocal agreements with the Government of Canada, another province of Canada or a state of the United States of America

(a) to determine the amount of gasoline tax properly due to or by each of those governments as a result of interjurisdictional carrier operations; and

(b) for collection, payment, refund or allocation of gasoline tax between the province and the government or governments to these agreements,

and may enter into agreements not inconsistent with this Act, amending the terms and conditions of those agreements.

1993 c32 s13

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Service or return

78. Where under this Act a document or information is required to be mailed to, or served upon, or sent or given to the minister, that document or information is mailed to, served upon or sent or given to the minister if it is mailed to, served upon or sent or given to the Deputy Minister of Finance or a person designated by the minister to receive that document or information.

1978 c39 s75

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Consolidated Revenue Fund

79. All amounts received by the minister by way of tax forms part of the Consolidated Revenue Fund.

1978 c39 s76

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R.S.Q., chapter P-29.1

AN ACT RESPECTING PETROLEUM PRODUCTS AND EQUIPMENT

This Act was formerly entitled: "An Act respecting the use of petroleum products". The title was replaced by section 1 of chapter 64 of the statutes of 1997.

CHAPTER I

PRELIMINARY PROVISIONS

Objects.

1. The objects of this Act are

1) to ensure the safety of persons and the protection of property and the environment from the risks arising from the use of petroleum products and equipment;

2) to ensure the quality of petroleum products and equipment;

3) to ensure control of the sale price of petroleum products.

1987, c. 80, s. 1; 1996, c. 61, s. 137; 1997, c. 64, s. 2.

Interpretation.

2. In this Act,

"petroleum product";

"petroleum product" means gasoline, diesel fuel, heating oil and oil previously used in a motor vehicle or hydraulic equipment, and any liquid mixture of hydrocarbons used as a motor fuel or combustible substance except liquefied gases and other used oil;

"petroleum equipment";

"petroleum equipment" means any installation, container, pipe, apparatus or other equipment that may be used for the handling, transfer or storage of petroleum products, except the tanks of motorized vehicles or equipment that contain petroleum products for the supply of the vehicle or equipment;

"high-risk petroleum equipment".

"high-risk petroleum equipment" means petroleum equipment possessing one or more of the following characteristics:

1) petroleum equipment, one or more components of which is partially or completely buried, and having a capacity of

(a) 500 or more litres, if it is used for gasoline, diesel fuel or used oil from a motor vehicle or hydraulic equipment;

(b) 4,000 or more litres, if it is used for heating oil, except equipment used for residential heating;

2) aboveground petroleum equipment that has a capacity of 2,500 or more litres, if it is used for gasoline;

3) petroleum equipment that has a capacity of 10,000 or more litres, except if it is used for used oil from a motor vehicle or hydraulic equipment;

4) petroleum equipment used for the sale or distribution of petroleum products for profit, otherwise than in a context of accommodation.

Capacity.

The capacity of petroleum equipment that is joined or linked to or used with other petroleum equipment is determined by adding their respective capacities.

1987, c. 80, s. 2; 1997, c. 64, s. 2.

Government and mandataries.

3. This Act is binding on the Government, government departments and the bodies which are mandataries of the State.

1987, c. 80, s. 3; 1997, c. 64, s. 2; 1999, c. 40, s. 326.

CHAPTER II

QUALITY AND SAFETY STANDARDS

Petroleum products and petroleum equipment.

4. Petroleum products must be composed and petroleum equipment must be manufactured, installed, used and maintained in order to ensure that, in normal conditions of use and when used as intended, they provide satisfactory levels of performance while minimizing the danger to persons, property and the environment.

1987, c. 80, s. 4; 1997, c. 64, s. 2.

CHAPTER II

DIVISION I

Quality and safety standards.

5. The Government may determine, by regulation, quality and safety standards applicable to petroleum products. The standards may prohibit or require the presence of certain elements in a petroleum product ; they may also prescribe the acceptable quantity or proportion of such elements.

Prohibition.

No person may manufacture, sell or store in high-risk petroleum equipment a petroleum product that does not meet the regulatory standards.

1987, c. 80, s. 5; 1994, c. 13, s. 15; 1997, c. 64, s. 2.

Requirements.

6. Petroleum equipment must, to meet the requirements of section 4,

1) be manufactured and installed in such a way as to safely contain the petroleum products intended to be placed in it, and to resist wear, normal handling, fire and shocks;

2) be sufficiently leakproof to ensure against the risk of explosion, fire, spillage or other accidents, and be maintained in good working order;

3) be housed, or installed in such a way as to prevent unauthorized persons from gaining access to it and to prevent objects that could increase the risk of accident from coming into contact with it;

4) be equipped with the necessary protection devices, and be installed in such a way as to ensure maximum safety to persons having access to it or being supplied from it;

5) be manufactured and installed in such a way as to be easily maintained, repaired or dismantled.

1987, c. 80, s. 6; 1997, c. 64, s. 2.

Standards.

7. Petroleum equipment must, in addition, meet such standards as the Government may prescribe, by regulation, concerning its manufacture, installation, maintenance, use, draining, dismantling and removal.

1987, c. 80, s. 7; 1997, c. 64, s. 2.

Periodic testing.

8. Furthermore, to allow for the rapid detection and correction of any problem or defect, the operating performance of high-risk petroleum equipment must be tested periodically by the person holding the permit for that equipment, and the equipment must be inspected periodically by a certified inspector registered in the register established under section 42.

Regulations.

The Government shall determine, by regulation, the content, frequency and other conditions of the required tests and inspections.

1987, c. 80, s. 8; 1997, c. 64, s. 2.

Prohibition.

9. No person may manufacture or sell petroleum equipment that does not meet the manufacturing standards referred to in paragraph 1, 4 or 5 of section 6 or those prescribed under section 7.

Exception.

However, a person who manufactures or sells petroleum equipment intended for use outside Québec is exempted from the obligation of complying with the manufacturing standards referred to in the first paragraph.

Prohibition.

No person may install petroleum equipment that does not meet those manufacturing standards or the installation standards referred to in paragraph 1, 3, 4 or 5 of section 6 or those prescribed under section 7.

1987, c. 80, s. 9; 1997, c. 64, s. 2.

Prohibition.

10. No person may store petroleum products in petroleum equipment that does not meet the requirements of paragraphs 2, 3 and 4 of section 6 and the manufacturing, installation or maintenance standards prescribed under section 7.

1987, c. 80, s. 10; 1997, c. 64, s. 2.

Safe procedures and equipment.

11. The following persons must use safe procedures and equipment, correctly use every safety device placed at their disposal and take all necessary precautions to prevent the risk of explosion, fire, spillage or other accidents:

1) every person who handles petroleum products, in particular every person who delivers, pumps or transfers such products;

2) every person who performs work on petroleum equipment, or who drains, dismantles or removes petroleum equipment;

3) every person who uses petroleum equipment.

Standards.

Such persons must, in addition, observe the standards applicable to the maintenance, use, draining, dismantling and removal prescribed under section 7.

1987, c. 80, s. 11; 1997, c. 64, s. 2.

Contravention.

12. A person having entered into a contract for the performance of work involving petroleum equipment may, on becoming aware that the work has been or very likely will be performed in contravention of the standards prescribed under this Act or the regulations, institute proceedings to have the contract declared null.

1987, c. 80, s. 12; 1997, c. 64, s. 2.

Annulment of contract.

13. The annulment of the contract confers on the plaintiff the right to monetary restitution of all the prestations he has made under the contract without his being required to make any restitution to the defendant.

Exception.

However, the court may, by way of exception, deny the plaintiff the right to restitution of the prestations where restitution would have the effect of affording the plaintiff an excessive advantage, having regard to the circumstances.

1987, c. 80, s. 13; 1997, c. 64, s. 2.

Mandatory reporting.

14. Every person who delivers petroleum products or stores petroleum products in petroleum equipment and who is aware of facts indicating the existence of a product leak or spillage, an equipment defect or failure or any other accident must report those facts to the Minister in the circumstances determined by government regulation.

Report.

The Government may, by regulation, prescribe the form and content of a report and the manner in which and time within which it must be forwarded, which may vary according to the nature and site of the accident or to the person required to report it to the Government.

1987, c. 80, s. 14; 1997, c. 64, s. 2.

Demolition.

15. No person may demolish a petroleum product manufacturing plant or any part thereof except with the prior authorization of the Minister and only on the conditions fixed by the Minister, if any.

1987, c. 80, s. 15; 1997, c. 64, s. 2.

CHAPTER III

SPECIAL STANDARDS FOR HIGH-RISK PETROLEUM EQUIPMENT

DIVISION I

PERMITS

Permit.

16. A permit is required for the use of high-risk petroleum equipment.

Exception.

However, no permit is required if the petroleum equipment is used exclusively for the transportation of petroleum products.

1987, c. 80, s. 16; 1997, c. 43, s. 816; 1997, c. 64, s. 2.

Prohibition.

17. No person may deliver petroleum products to high-risk petroleum equipment that is not covered by a valid permit issued under this Act.

1987, c. 80, s. 17; 1997, c. 64, s. 2.

Issue.

18. The permit shall be issued to the owner of the high-risk petroleum equipment or to a person designated by the owner and to whom the owner has entrusted the responsibility of maintaining and repairing the equipment.

1987, c. 80, s. 18; 1997, c. 64, s. 2.

DIVISION II

Obligation.

19. Any owner who entrusts the custody of petroleum equipment to a third person must ensure that the third person holds a valid permit and has the qualifications required to meet the requirements of section 11.

Obligation.

The owner must take all the steps that are reasonable in the circumstances to ensure that the third person performs the required maintenance and repair work on the equipment.

1987, c. 80, s. 19; 1988, c. 21, s. 66; 1997, c. 43, s. 818; 1997, c. 64, s. 2.

Access.

20. The holder of a permit who is not the owner of the equipment covered by the permit must allow the owner to have access, at all reasonable times, to the site where the equipment is located and to the documents concerning the equipment to enable the owner to verify the maintenance and repair work performed on the equipment.

1987, c. 80, s. 20; 1997, c. 43, s. 819; 1997, c. 64, s. 2.

Permit.

21. A permit shall be issued for each unit of petroleum equipment or for each combination of equipment located at the same address.

1987, c. 80, s. 21; 1988, c. 21, s. 66; 1997, c. 43, s. 820; 1997, c. 64, s. 2.

Issue.

22. The Minister shall issue a permit if

1) a certificate of inspection in respect of the equipment, where required by regulation, has been issued by a certified registered inspector attesting that the equipment has been inspected;

2) all fees payable have been paid;

3) the applicant has shown that all the other conditions prescribed by government regulation have been fulfilled.

Information.

The Minister may require the applicant to provide all the relevant information or documents required for consideration of the application.

1987, c. 80, s. 22; 1988, c. 21, s. 66; 1997, c. 43, s. 820; 1997, c. 64, s. 2.

Validity.

23. The period of validity of permits, the fees payable and the terms and conditions of payment shall be determined by government regulation.

1987, c. 80, s. 23; 1997, c. 43, s. 820; 1997, c. 64, s. 2.

Refusal.

24. The Minister may refuse to issue or renew a permit

1) if the applicant or, in the case of a legal person, a director or officer has, in the five preceding years,

(a) had his or its permit revoked;

(b) been found civilly or criminally liable for a failure to meet safety requirements in connection with petroleum equipment unless, in the case of a conviction, a pardon has been obtained;

2) if the certificate of inspection submitted with the application was issued on the basis of inaccurate or misleading information;

3) if regulatory inspection standards were not complied with;

4) if the inspector was in a situation of conflict of interest, as defined in section 47, when he issued the certificate.

1987, c. 80, s. 24; 1997, c. 43, s. 820; 1997, c. 64, s. 2.

Renewal.

25. A permit may be renewed if

1) the application for renewal is received by the Minister and the prescribed fees are paid before the date of expiry of the permit;

2) the permit holder attests, where required by regulation, that he or it has complied with the regulatory standards governing the testing of the operating performance of the petroleum equipment covered by the permit;

3) a certificate of inspection in respect of the equipment, where required by regulation, has been issued by a certified registered inspector attesting that the equipment has been inspected;

4) the permit holder has complied with the provisions of this Act and the regulations; and

5) the permit holder establishes that he or it has complied with such other conditions as the Government may prescribe by regulation.

Information.

The Minister may require the applicant to provide all the relevant information or documents required for consideration of the application.

1987, c. 80, s. 25; 1988, c. 21, s. 66; 1997, c. 43, s. 820; 1997, c. 64, s. 2.

Validity.

26. A permit shall remain valid beyond its date of expiry, if an application for renewal has been received at least 30 days before that date, until a decision is made by the Minister.

Effective date.

The renewal is effective from the date of expiry of the permit.

1987, c. 80, s. 26; 1988, c. 21, s. 66; 1997, c. 43, s. 820; 1997, c. 64, s. 2.

DIVISION III

Transferability.

27. No permit may be transferred except with the authorization of the Minister.

Temporary authorization.

The Minister may temporarily authorize a person other than the permit holder to act under the authority of a permit in order to facilitate a transition or other acts made necessary owing to the death, liquidation of the property of or bankruptcy of the permit holder, to the transfer or sale of the property of the permit holder, or to any other similar situation. The person to whom temporary authorization is granted must fulfill all obligations incumbent on the permit holder under this Act.

Fees.

An application for temporary authorization or for the transfer of a permit is subject to the payment of the fees fixed by government regulation.

Information.

The Minister may require the applicant to provide all the relevant information or documents required for consideration of the application.

1987, c. 80, s. 27; 1997, c. 64, s. 2.

Notice of changes.

28. A permit holder must advise the Minister of any change that renders any information, certificate or document submitted to the Minister inaccurate or incomplete.

1987, c. 80, s. 28; 1997, c. 64, s. 2.

Display of permit.

29. The permit or duplicate issued to the permit holder by the Minister must be posted in view of the public on a unit of petroleum equipment, at the entrance to the place where the equipment is located or in a place that is visible from outside the building used by the permit holder as a business establishment, if the equipment is located at the same address.

1987, c. 80, s. 29; 1997, c. 64, s. 2; 1999, c. 40, s. 326.

Revocation.

30. The Minister may revoke a permit at the request of the permit holder, provided he has no serious cause to revoke the permit otherwise. Such revocation shall entitle the permit holder to receive a refund of the fees paid in proportion to the number of months remaining between the revocation of the permit and the end of its period of validity.

1987, c. 80, s. 30; 1997, c. 64, s. 2.

Amendment or replacement.

31. Where, during the period of validity of a permit, a tank is added or replaced or other material changes are made to other parts of petroleum equipment, thereby invalidating the permit or inspection certificates issued, the permit shall be amended or replaced by a new permit, at the option of the permit holder.

Amended permit.

If the permit holder opts for an amended permit, the permit holder must provide the Minister with an inspection certificate for the new equipment, in accordance with the regulatory standards, and pay any additional amount of fees applicable.

New permit.

If the permit holder opts for a new permit, the application shall be dealt with as an application for renewal.

1987, c. 80, s. 31; 1997, c. 64, s. 2.

Suspension or revocation.

32. The Minister may suspend or revoke a permit where the permit holder

1) no longer fulfills the conditions for obtaining or renewing a permit;

2) does not comply with the provisions of this Act and the regulations or with a private petroleum equipment inspection program approved by the Minister;

3) refuses or neglects to remedy any deficiency observed in accordance with the conditions and within the time limit determined pursuant to section 33.

1987, c. 80, s. 32; 1997, c. 64, s. 2.

Reinstatement.

33. Where a permit holder fails to comply with the provisions of this Act or of a regulation, or of a private petroleum equipment inspection program, the Minister may require the permit holder to remedy his or its failure in accordance with the conditions and within the time limit fixed by the Minister before the permit is maintained or reinstated following a suspension.

1987, c. 80, s. 33; 1997, c. 64, s. 2.

CHAPTER III

Notification.

34. Before suspending, revoking, refusing to renew or imposing conditions for the maintenance or reinstatement of a permit, the Minister must notify the permit holder, in writing, as prescribed in section 5 of the Act respecting administrative justice (chapter J-3) and grant him or it at least 10 days to present observations.

Urgent suspension.

The Minister may, where urgent action is required or so as to prevent irreparable damage being caused to persons, property or the environment, suspend a permit without being bound by such prior obligations.

Review.

In such a case, the permit holder may, within 10 days of being notified of the decision, present observations to the Minister for a review of the decision.

Contestation.

Unfavourable decisions concerning a permit made by the Minister may be contested by the interested person before the Administrative Tribunal of Québec in accordance with the Act respecting administrative justice.

1987, c. 80, s. 34; 1997, c. 64, s. 2.

DIVISION II

OBLIGATIONS OF PERMIT HOLDERS

Operation of equipment.

35. A permit holder who allows another person to operate the equipment covered by the permit is required to take all reasonable steps to ensure that that other person observes the requirements of section 11.

1987, c. 80, s. 35; 1997, c. 64, s. 2.

Defects.

36. A permit holder must, as soon as possible after it has been brought to his or its knowledge, correct any defect in petroleum equipment that imperils public safety or constitutes a serious threat to the environment.

1987, c. 80, s. 36; 1997, c. 64, s. 2.

Information.

37. The Government may determine, by regulation, the information that must be entered in a register and the information or documents that must be retained by a permit holder, as well as the prescribed period of retention.

Report.

The Minister may require that a permit holder produce a report on all activities relating to the petroleum equipment covered by his or its permit, in the form and at the time determined by the Minister, and that all the required information be included in the report.

1987, c. 80, s. 37; 1997, c. 64, s. 2.

DIVISION III

CERTIFICATION AND OBLIGATIONS OF INSPECTORS

Registration.

38. Only a person registered as a certified inspector in the register kept by the Minister may carry out an inspection of high-risk petroleum equipment required under this Act and issue a certificate.

1987, c. 80, s. 38; 1997, c. 64, s. 2.

Certification.

39. Certification shall be granted to a person who

1) has passed the examination, has the training or possesses the qualifications required by government regulation or, on the conditions prescribed by regulation, has established by any other means the Minister considers appropriate that he possesses equivalent knowledge or experience in the field of petroleum products and equipment;

2) has paid the fees payable for the consideration of his application and paid the fees required for registration;

3) has met any other conditions prescribed by government regulation.

Information.

The applicant must, in addition, provide any relevant information or document required by the Minister.

Certificate.

Upon granting an application for certification, the Minister shall provide the applicant with a certificate attesting his capacity as a certified inspector and his registration. Where the Minister refuses to grant certification, the fees paid for registration are refunded to the applicant.

1987, c. 80, s. 39; 1997, c. 64, s. 2.

Refusal.

40. The Minister may refuse to grant certification if, in the preceding five years,

1) the applicant's certification was revoked;

2) the applicant was convicted of an offence related to his activities as an inspector, unless he has obtained a pardon.

1987, c. 80, s. 40; 1997, c. 64, s. 2.

CHAPTER IV

Fees.

41. The fees required for the consideration of an application for certification, and the annual fees required for registration, shall be determined by government regulation.

Fees.

The Government may also determine, by regulation, the fees payable upon an application for re-registration following a revocation of registration.

1987, c. 80, s. 41; 1996, c. 61, s. 138; 1997, c. 64, s. 2.

Register.

42. The Minister shall keep a register of the names and addresses of certified inspectors.

Revocation of registration.

Failure to pay the annual fees by the date on which they become payable entails, by operation of law, revocation of registration.

Public information.

The information contained in the register is public information.

1987, c. 80, s. 42; 1996, c. 61, s. 138; 1997, c. 64, s. 2.

Notice of changes.

43. A certified inspector must advise the Minister of any change that renders the information or documents submitted to the Minister inaccurate or incomplete.

1987, c. 80, s. 43; 1996, c. 61, s. 138; 1997, c. 64, s. 2.

Examination.

44. The Minister may require a certified inspector to undergo an examination or training specified by the Minister where

1) the Minister considers it necessary in light of new developments in the field of petroleum products and equipment;

2) the inspector has failed to comply with the provisions of this Act or the regulations;

3) the inspector's registration has been suspended or must be renewed following a revocation of registration.

1987, c. 80, s. 44; 1996, c. 61, s. 138; 1997, c. 64, s. 2.

Suspension or revocation.

45. The Minister may suspend or revoke the certification of a certified inspector where the inspector

1) no longer fulfills the conditions for certification;

2) obtained certification by fraud or on false representation;

3) fails to comply with the provisions of this Act or the regulations;

4) has failed, or refused to undergo, the examination or training required by the Minister;

5) is negligent or dishonest in the performance of his activities.

Suspension or revocation.

The suspension or revocation of certification entails, by operation of law, a corresponding suspension or revocation of registration.

1987, c. 80, s. 45; 1996, c. 61, s. 138; 1997, c. 64, s. 2.

Notification.

46. Before suspending or revoking certification, or requiring an inspector to pass an examination or training, the Minister must notify the inspector in writing, as prescribed in section 5 of the Act respecting administrative justice (chapter J-3) and allow him at least 10 days to present observations.

Urgent suspension.

The Minister may, where urgent action is required or so as to prevent irreparable damage being caused to persons, property or the environment, suspend certification without being bound by such prior obligations.

Review.

In such a case, the inspector may, within 10 days of being notified of the decision, present observations to the Minister for a review of the decision.

Contestation.

Unfavourable decisions concerning certification made by the Minister may be contested by the interested person before the Administrative Tribunal of Québec in accordance with the Act respecting administrative justice.

1997, c. 64, s. 2.

Conflict of interest.

47. A certified inspector must safeguard his professional independence and avoid any situation in which the inspector would be in a conflict of interest.

Conflict of interest.

A conflict of interest arises, in particular, where an inspector

1) inspects petroleum equipment belonging to an enterprise by which he is employed, unless he is required, by law, to adhere to a code of professional conduct;

2) performs work on petroleum equipment or decontamination work on sites polluted by petroleum products, or supervises such work, in the capacity of a contractor or employee;

3) has a direct or indirect interest in an enterprise that performs work on petroleum equipment, designs or manufactures petroleum equipment, or engages in activities in the field of petroleum product sales, storage or transportation.

Standards of ethics.

In addition, a certified inspector must, in exercising his functions, comply with such standards of ethics as the Government may prescribe by regulation.

1997, c. 64, s. 2.

Confidential information.

48. The information obtained by a certified inspector in exercising his functions is confidential; it may not be disclosed or made accessible to persons not legally entitled thereto except with the written authorization of the person concerned.

1997, c. 64, s. 2.

Prohibition.

49. A certified inspector may not use confidential information to obtain, directly or indirectly, an advantage for himself or for others.

1997, c. 64, s. 2.

Information.

50. The Government may determine, by regulation, the information that must be entered in a register and the information and documents that must be retained by a certified inspector, as well as the prescribed period of retention.

Report.

The Minister may require that a certified inspector produce a report on his activities in the form and at the time determined by the Minister, and that all the required information be included in the report.

1997, c. 64, s. 2.

DIVISION IV

INSPECTION OF HIGH-RISK PETROLEUM EQUIPMENT

Standards.

51. The inspection of high-risk petroleum equipment by a certified inspector must be carried out in accordance with the standards prescribed by government regulation.

Test.

The standards may include a requirement to test for soil contamination in the vicinity of the equipment.

Variations.

The standards may, in particular, vary with regard to

1) the characteristics of the petroleum equipment, its location or its use;

2) the fact that the petroleum equipment is being brought into service for the first time;

3) the work carried out since the last inspection;

4) the extent of the last inspection or last testing of operating performance, the date on which it was carried out and the results obtained;

5) the results of the last leak test;

6) any complaints received in connection with the condition of the petroleum equipment that the Minister considers justified, and the inspection reports;

7) any recommendations joined to the last certificate issued;

8) the times or frequency at which the petroleum equipment must be inspected;

9) the facts observed during the inspection;

10) the management of the petroleum equipment and the training of the persons operating the equipment.

1997, c. 64, s. 2.

Certificate.

52. Not later than ten days after the completion of the inspection, the certified inspector shall issue a certificate attesting that the inspection has been passed if, in the opinion of the inspector, all the prescribed requirements have been met. In other cases, the certified inspector shall give the applicant or permit holder a notice setting out the deficiencies observed or the other grounds for his refusal to issue a certificate.

1997, c. 64, s. 2.

Copy to Minister.

53. The inspector must, without delay, forward to the Minister a copy of every certificate issued and every notice given to a permit holder.

1997, c. 64, s. 2.

Content.

54. A certificate must contain a description of the equipment inspected and its location, and the other information required by government regulation.

1997, c. 64, s. 2.

Recommendations.

55. The inspector may, where advisable, join his recommendations to the certificate issued to maintain certification throughout the period of validity of the permit.

1997, c. 64, s. 2.

Certificate not a safety guarantee.

56. The fact that an inspection has been carried out and that a certificate issued by a certified inspector has been accepted by the Minister does not relieve a permit holder or any other person governed by this Act from the responsibilities that are incumbent upon them. More specifically, they shall not be considered to be a general attestation or a guarantee of the safety of the petroleum equipment concerned, or of its conformity with any applicable legislative or regulatory provision.

1997, c. 64, s. 2.

DIVISION V

PRIVATE INSPECTION PROGRAMS FOR HIGH-RISK PETROLEUM EQUIPMENT

Alternative program.

57. The Minister may approve a private inspection program for high-risk petroleum equipment submitted by a permit holder as an alternative to the tests and inspections required under section 8.

1997, c. 64, s. 2.

Content.

58. A program may, in particular, include clauses concerning

1) the required performance levels for the petroleum equipment used;

2) the human and financial resources allocated to the testing and inspection of the petroleum equipment, and to the work performed on the equipment;

3) the training of the personnel assigned to activities related to petroleum equipment;

4) the exchange of information between the permit holder and the Minister;

5) the frequency of prescribed inspections, tests and analyses and reports;

6) the procedure for grouping applications for the renewal of the permit holder's permits, where the permit holder has undertaken to apply more than one program;

7) the conditions or procedure for terminating the program.

Validity.

The period of validity of a program may not exceed five years. The program must be set out in writing and be signed by the permit holder. The same conditions apply to the renewal of the program and to any amendment to the program made with the Minister's approval.

1997, c. 64, s. 2.

Regulations.

59. The Government may, by regulation, set conditions for the approval of a program and determine the minimum content of a program. The Government may also determine, by regulation, the amount of the fees payable by a permit holder for the consideration of his or its application.

1997, c. 64, s. 2.

Compliance.

60. Compliance with the clauses of a program dispenses a permit holder from the requirements relating to the tests of the operating performance of petroleum equipment and the inspections of the equipment that are required for the renewal of a permit under subparagraphs 2 and 3 of the first paragraph of section 25.

1997, c. 64, s. 2.

Termination.

61. A program may be terminated in accordance with the conditions set out in the program.

Premature termination.

In addition, the Minister may terminate a program prematurely without compensation where, in the Minister's opinion, the permit holder

1) no longer has the necessary resources to perform the obligations set out in the program;

2) no longer fulfills the conditions for the approval of a program prescribed by regulation;

3) does not comply with the provisions of this Act or the regulations, or with the obligations incumbent upon him or it under the program;

4) has made false or misleading statements to the Minister.

Notification.

Before terminating a program, the Minister must notify the permit holder in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the permit holder at least ten days to present observations.

Urgent termination.

The Minister may, where urgent action is required or so as to prevent irreparable damage being caused to persons, property or the environment, terminate a program without being bound by such prior obligations.

Review.

In such a case, the permit holder may, within 10 days of being notified of the decision, present observations to the Minister for a review of the decision.

1997, c. 64, s. 2.

Inspection certificate.

62. Where a program is not renewed or is prematurely terminated and the permit is to remain valid for more than six months, the Minister may request that the permit holder provide, within the time fixed by the Minister, an inspection certificate as required for a permit renewal.

1997, c. 64, s. 2.

Register.

63. The Minister shall keep a register of approved programs in which he shall enter the particulars of the permit holders, the address where the equipment covered by each program is located, and the period of validity. Where applicable, the Minister shall also indicate if the programs have been renewed, amended or prematurely terminated.

Public information.

The information contained in the list is public information.

1997, c. 64, s. 2.

CHAPTER IV

EXEMPTIONS FROM REGULATORY PROVISIONS

Authorized alternatives.

64. The Minister, on the conditions he determines, may authorize alternatives to the equipment, processes or standards prescribed by regulation, if it can be shown that the resulting level of quality or safety would be at least equivalent to the level obtained through compliance with the regulatory provisions.

1997, c. 64, s. 2.

CHAPTER VIII

Compliance.

65. A person who complies with the conditions of the Minister's authorization under section 64 does not contravene the regulatory provision specified in the authorization.

1997, c. 64, s. 2.

Register.

66. The Minister shall keep a register of all authorizations, in which he shall enter the names of the persons to whom the authorizations have been granted, the regulatory provisions concerned, the alternatives authorized and the location of the equipment concerned.

Public information.

Such information is public information.

1997, c. 64, s. 2.

CHAPTER V

ABUSIVE PRACTICES IN GASOLINE AND DIESEL FUEL SALES

Retail price lower than cost.

67. Where, in a given zone, an enterprise sells gasoline or diesel fuel at retail for a price that is lower than the cost to a retailer in that zone of purchasing and reselling that product, the enterprise is presumed to be exercising its rights in an abusive and unreasonable manner, contrary to the requirements of good faith, and to have committed a fault against the retailer.

Damages.

The court may condemn the enterprise having committed the fault to pay punitive damages.

Interpretation.

For the purposes of the first paragraph,

1) the cost to the retailer is the sum of

(a) the minimum price at the loading ramp published in the periodical designated by the Minister in a notice in the *Gazette officielle du Québec*;

(b) the minimum transportation cost, that is, the cost to the retailer of conveying the product from the refinery to the service station by the most economical means of transportation;

(c) the federal and provincial taxes;

(d) the amount representing operating costs determined by the Régie de l'énergie under section 59 of the Act respecting the Régie de l'énergie (chapter R-6.01), unless the Régie decides otherwise;

2) a zone is the territory of a local municipality or a sale zone determined by the Régie de l'énergie, where that is the case.

1996, c. 61, s. 139; 1997, c. 64, s. 3.

CHAPTER VI

PRICE CONTROLS

Maximum price.

68. Where in its opinion such action is required in the public interest, the Government may fix, by an order in council, the maximum price at which a petroleum product may be sold or distributed.

Content of order.

The order in council may concern

1) one or several petroleum products;

2) the price or its components, except any component in relation to a duty or tax levied pursuant to any law of the Parliament of Canada;

3) all or part of the territory of Québec.

1987, c. 80, s. 46; 1997, c. 64, s. 4.

Amendment of contract.

69. Every contract concerning the sale or distribution of petroleum products that stipulates a higher price than that determined by an order in council shall be amended so as to bring the price stipulated in the contract into conformity with that fixed by the order in council.

Validity.

The contract remains valid between the parties in every other respect.

1987, c. 80, s. 47; 1997, c. 64, s. 4.

Information required by the Minister.

70. The Minister may, at any time, order any person to provide him with any required information concerning his sales or distribution of petroleum products other than gasoline and the prices, taxes and duties charged and paid therefor.

1987, c. 80, s. 48; 1997, c. 64, s. 4.

Compliance.

71. Every person must comply with an order given by the Minister.

1987, c. 80, s. 49; 1997, c. 64, s. 4.

False information.

72. No person may make a false or misleading declaration or consent to such a declaration in reply to an order given by the Minister.

1987, c. 80, s. 50; 1997, c. 64, s. 4.

Sale price.

73. No person may sell or distribute a petroleum product in Québec at a price higher than that determined by the order in council.

1987, c. 80, s. 51; 1997, c. 64, s. 4.

Destruction of documents.

74. No person may destroy, alter, mutilate or conceal a register, book of account or any other document relating to the sale or distribution of petroleum products.

1987, c. 80, s. 52; 1997, c. 64, s. 4.

False entry.

75. No person may make a false or misleading entry or consent to the making of such an entry.

1987, c. 80, s. 53; 1997, c. 64, s. 4.

Omission.

76. No person may omit to make an entry in a register or book of account or consent to the omission of such an entry.

1987, c. 80, s. 54; 1997, c. 64, s. 4.

CHAPTER IX

Establishment and functions.

77. The Minister may establish an advisory committee, charged with advising him on any question he submits in connection with this Act or on the means of promoting the development and dissemination of knowledge in the fields to which this Act applies.

Initiative of committee.

The committee may also, on its own initiative, advise the Minister on the best means of improving the quality of petroleum products or petroleum equipment, and on the best means of installing and performing work on petroleum equipment in order to ensure the protection of persons, property and the environment.

1997, c. 64, s. 5.

Composition.

78. The committee shall consist of eleven members appointed by the Minister, and shall include

1) two persons selected from among the persons responsible for the application of this Act;

2) one person involved in the field of fire prevention;

3) one person involved in the field of environmental protection;

4) one person having recognized expertise in the field of petroleum equipment;

5) five permit holders;

6) one member of the personnel of a municipality who applies regulatory measures in the field of petroleum products or equipment.

1997, c. 64, s. 5.

Term.

79. The members shall be appointed for a term not exceeding three years. They shall remain in office on the expiry of their term until replaced or reappointed.

Loss of qualification.

The term of a member who no longer has the qualification for which he was appointed is terminated.

1997, c. 64, s. 5.

Chairman.

80. The Minister shall designate the chairman of the committee from among its members, with responsibility for the administration and general direction of the committee.

Term.

The term of the chairman's administrative appointment may be of lesser duration than his term as a member of the committee.

1997, c. 64, s. 5.

Vacancies.

81. Any vacancy occurring during a term of appointment shall be filled in accordance with the rules set out in section 78.

Replacement.

If a member is absent or unable to act, the Minister shall designate a replacement for the duration of the absence or inability to act.

1997, c. 64, s. 5.

Remuneration.

82. The members of the committee shall receive no remuneration, except in the cases, on the conditions and to the extent determined by the Government.

Expenses.

The members are, however, entitled to the reimbursement of expenses incurred in the performance of their duties, on the conditions and to the extent determined by the Government.

1997, c. 64, s. 5.

Meetings.

83. The committee shall meet at the request of the chairman, of a majority of members or of the Minister.

Quorum.

The quorum at meetings of the committee is a majority of the members, including the chairman.

Advice.

Any advice given by the committee must be supported by a majority of the members present.

1997, c. 64, s. 5.

Internal management.

84. The committee may adopt internal management by-laws to regulate, in particular, the conduct of its business and the frequency of its meetings. The by-laws must be submitted to the Minister for approval.

1997, c. 64, s. 5.

Temporary assignments.

85. The Minister may temporarily assign departmental staff to the committee as needed to pursue its activities, or provide the committee with professional or technical support for certain operations or during certain periods.

1997, c. 64, s. 5.

Reports.

86. The Minister may require the committee to provide reports or information on its activities.

1997, c. 64, s. 5.

CHAPTER VIII

INSPECTION

Inspectors.

87. A chief inspector and inspectors shall, to ensure the enforcement of this Act and the regulations thereunder, be appointed in accordance with the Public Service Act (chapter F-3.1.1).

Powers.

The Minister may grant some or all of the powers of an inspector to other members of the public service. The provisions of this chapter that are applicable to inspectors shall, in such a case, be applicable to such persons as regards the exercise of such powers. The same applies where inspection duties are assigned to the members of the personnel of a municipality as part of a pilot project conducted under the provisions of the Cities and Towns Act (chapter C-19) or the Municipal Code of Québec (chapter C-27.1), as amended by sections 2 and 44 of the Act to amend the Cities and Towns Act, the Municipal Code of Québec and other legislative provisions (1996, chapter 27).

1987, c. 80, s. 55; 1997, c. 64, s. 7; 2000, c. 8, s. 242.

Powers.

88. An inspector may, in order to ascertain whether this Act and the regulations thereunder, the private inspection programs and the conditions of the authorizations given under section 64 are being complied with,

1) have access, at any reasonable time, to any place petroleum products or equipment are located or where an activity governed by this Act and the regulations thereunder is carried on and inspect such place;

1.1) take photographs of the premises and of the petroleum products and equipment found there;

2) take samples of any petroleum product with a view to having them analyzed and test any petroleum equipment;

3) examine and make copies of the registers, records and other documents relating to the activities and the petroleum products and equipment governed by this Act and the regulations thereunder;

4) require any information or document relating to the enforcement of this Act and the regulations thereunder;

5) require any person present on the premises to provide any reasonable assistance.

1987, c. 80, s. 56; 1997, c. 64, s. 8.

Identification and certificate.

89. The inspector shall, on request, identify himself and produce a certificate of his quality signed by the Minister.

1987, c. 80, s. 57; 1997, c. 64, s. 9.

Danger to the environment or to human safety.

90. An inspector who has reasonable and probable grounds to believe that petroleum equipment presents a danger to the environment or to human safety or is used to sell or store a petroleum product which does not conform to standards prescribed by regulation, may order the equipment or the place where the equipment is found to be closed or may prohibit its use and, where advisable, affix seals thereto.

1987, c. 80, s. 58; 1997, c. 64, s. 10.

Reopening of premises.

91. The Minister shall authorize the reopening of the premises or the restarting of the petroleum equipment and, where such is the case, the removal of seals and the lifting of the prohibition to use the facility or equipment where he is satisfied that it no longer presents a danger to the environment or to human safety according to the standards prescribed by regulation or where the petroleum products which did not conform to the standards have been disposed of to his satisfaction.

1987, c. 80, s. 59; 1997, c. 64, s. 11.

Notice of correction.

92. The inspector shall give the holder of a permit a notice of correction in which he specifies the irregularities ascertained and the time allowed to correct them.

Failure to comply.

If the holder of a permit or registration certificate fails to conform to the notice within the time allowed, the Minister may direct the carrying out of the corrective measures specified in the notice at the expense of the person in default.

1987, c. 80, s. 60; 1997, c. 64, s. 12.

Seal.

93. No person may break a seal affixed by an inspector.

1987, c. 80, s. 61; 1997, c. 64, s. 13.

Hindering prohibited.

94. No person may hinder an inspector in the performance of his duties, mislead him by concealment or false declarations or refuse to disclose to him information which he is entitled to obtain under this Act.

1987, c. 80, s. 62; 1997, c. 64, s. 13.

Immunity.

95. No inspector may be prosecuted for official acts performed in good faith in the performance of his duties.

1987, c. 80, s. 63; 1997, c. 64, s. 13.

CHAPTER IX

REGULATORY POWERS

Regulations.

96. In addition to the regulatory powers provided for in the other provisions of this Act, the Government may, by regulation,

1) determine the methods, conditions and procedure for taking samples and analyzing petroleum products or for testing petroleum equipment;

2) determine which provisions of a regulation are to be under the administration of the minister responsible for the Environment Quality Act (chapter Q-2);

3) require that all or part of a report, study or analysis required under this Act be transmitted to the minister responsible for the Environment Quality Act or to a

municipality;

4) determine, among the provisions of a regulation for which no penalty is otherwise provided, those the contravention of which constitutes an offence and specify among the fines prescribed by section 106 the fine to which the offender is liable.

Regulation under subpar. 2 or 3.

No regulation may be made by the Government under subparagraph 2 or 3 of the first paragraph except on the joint recommendation of the minister responsible for the administration of this Act and the minister responsible for the administration of the Environment Quality Act (chapter Q-2).

1987, c. 80, s. 64; 1992, c. 61, s. 647; 1997, c. 64, s. 14.

Standards and fees.

97. The standards and fees determined by regulation may vary according to the types of petroleum products and equipment, their use, the number of units of petroleum equipment, their capacity, the places where they are used and the persons who use them, or according to the activities of the permit holder.

1987, c. 80, s. 65; 1990, c. 4, s. 947; 1996, c. 61, s. 140; 1997, c. 64, s. 14.

CHAPTER X

PENAL PROVISIONS

Offence and penalty.

98. The following persons are guilty of an offence and are liable to a fine of $2,000 to $20,000:

1) every person who contravenes the second paragraph of section 5;

2) every person who contravenes section 73.

1987, c. 80, s. 66; 1990, c. 4, s. 947; 1997, c. 64, s. 14.

Offence and penalty.

99. Every person who contravenes the provisions of section 15 is guilty of an offence and is liable to a fine of $2,000 to $20,000, or to an amount equivalent to the cost of reconstruction, whichever is the higher.

1987, c. 80, s. 67; 1990, c. 4, s. 947; 1997, c. 64, s. 14.

Offence and penalty.

100. Every person who contravenes the provisions of section 9, 10 or 11 and every owner who contravenes the provisions of section 19 is guilty of an offence and is liable to a fine of $500 to $10,000 in the case of a natural person and $1,000 to $20,000 in the case of a legal person. Where the offence involves high-risk petroleum equipment, the minimum fines shall be $1,000 and $2,000, respectively.

1987, c. 80, s. 68; 1990, c. 4, s. 947; 1997, c. 64, s. 14.

Offence and penalty.

101. The following persons are guilty of an offence and are liable to a fine of $2,000 to $20,000:

1) every person who uses high-risk petroleum equipment that is not covered by the permit required by law, or while such permit is suspended;

2) every permit holder who contravenes the first paragraph of section 31 or the provisions of section 35 or 36;

3) every person who contravenes section 93;

4) every person who carries out an inspection of petroleum equipment required under this Act or issues an inspection certificate without being registered in the register of inspectors or while such registration is suspended.

Period of suspension.

In the case of a suspended permit referred to in subparagraph 1 of the first paragraph, the court may also order that the period of suspension be extended by a further 6 to 12 months. The decision shall be forwarded to the Minister by the clerk of the court.

1987, c. 80, s. 69; 1990, c. 4, s. 948; 1997, c. 64, s. 14.

Offence and penalty.

102. Every person who manufactures or acquires, or sells or procures to another person, petroleum equipment that has a capacity below the capacities specified in paragraph 1, 2 or 3 of the definition in section 2 of `high-risk petroleum equipment´, for the purpose of avoiding or enabling another person to avoid the obligation incumbent upon him or upon the other person to hold a permit, is guilty of an offence and is liable to a fine of $2,000 to $20,000.

1987, c. 80, s. 70; 1990, c. 4, s. 948; 1997, c. 64, s. 14.

Offence and penalty.

103. Every person who contravenes a provision of section 71, 72, 74, 75, 76 or 94, and every permit holder or inspector who, while bound by the obligations imposed by this Act, makes a false or misleading statement to the Minister or enters false or misleading data in a register, or who participates in or consents to such statements or entries, is guilty of an offence and is liable to a fine of $500 to $10,000 in the case of a natural person and $2,000 to $20,000 in the case of a legal person.

1987, c. 80, s. 71; 1997, c. 64, s. 14.

Offence and penalty.

104. The following persons are guilty of an offence and are liable to a fine of $500 to $5,000:

1) every person who contravenes the first paragraph of section 14;

2) every person who delivers petroleum products in contravention of section 17;

3) every permit holder who fails to meet the obligations imposed under section 28, 29 or 37;

4) every certified inspector who fails to meet the obligations imposed under section 43, 50, 52, 53 or 54.

1987, c. 80, s. 72; 1990, c. 4, s. 949; 1997, c. 64, s. 14.

Offence and penalty.

105. Every certified inspector who contravenes a provision of section 47, 48 or 49 is guilty of an offence and is liable to a fine of $1,000 to $5,000.

1987, c. 80, s. 73; 1992, c. 61, s. 648; 1997, c. 64, s. 14.

Offence and penalty.

106. Every person who contravenes a regulatory provision the violation of which constitutes an offence and for which no penalty is otherwise provided, is liable to a fine in one of the following ranges, as specified in the regulation:

1) $500 to $5,000;

2) $1,000 to $10,000;

3) $2,000 to $20,000.

1987, c. 80, s. 74; 1992, c. 61, s. 648; 1997, c. 64, s. 14.

Subsequent offence.

107. For any subsequent offence, the amount of the fine is doubled.

1987, c. 80, s. 75; 1992, c. 61, s. 648; 1997, c. 64, s. 14.

Financial gain.

108. Where an offence has resulted in a financial gain for the offender, the applicable minimum and maximum fines shall be either the fines fixed for the offence under this Act, or the amount of the financial gain and twice the amount of the financial gain, whichever is higher.

1987, c. 80, s. 76; 1997, c. 64, s. 14.

Order to remedy.

109. The court may order an offender to remedy the failure for which he was convicted.

1987, c. 80, s. 77; 1996, c. 61, s. 141; 1997, c. 43, s. 821; 1997, c. 64, s. 14.

Offence committed over several days.

110. Where an offence referred to in sections 98 to 106 has continued for more than one day, it shall be counted as a number of offences equal to the number of days during which the offence has continued.

1987, c. 80, s. 78; 1997, c. 64, s. 14.

Offence and penalty.

111. The directors, officers, representatives and employees of an enterprise or legal person who failed to take all reasonable steps, having regard to the circumstances, to prevent the commission of an offence, or who ordered, authorized, consented to or participated in the offence, are guilty of an offence and liable to the penalty prescribed for the offence, whether or not the enterprise or legal person has been prosecuted or convicted.

Offence and penalty.

The same rule applies to a person who employs or retains the services of another person or enterprise to perform activities governed by this Act.

1987, c. 80, s. 79; 1997, c. 64, s. 14.

Report as evidence.

112. In any proceedings, a report relating to the analysis of a petroleum product, signed by an analyst recognized by the Minister, shall, in the absence of any evidence to the contrary, be accepted as evidence of its content and of the authority of the person signing the report without further proof of appointment or signature.

Costs of analysis.

The cost of such analysis shall form part of the costs of the offender.

1987, c. 80, s. 80; 1997, c. 64, s. 14.

Time limit.

113. Penal proceedings must be instituted within two years of the commission of an offence.

Time limit.

However, where a false or misleading statement is made to the Minister or an inspector, penal proceedings must be instituted within two years from the date on which the investigation record was opened or from the date on which the inspection which led to the discovery of the offence began.

Certificate as proof.

The certificate of the Minister, investigator or inspector, as the case may be, indicating the date on which the investigation or inspection began constitutes, in the absence of any evidence to the contrary, conclusive proof of such fact.

1987, c. 80, s. 81; 1997, c. 64, s. 14.

CHAPTER XI

MISCELLANEOUS PROVISIONS

Delegation of powers.

114. The Minister may, by order, delegate the powers conferred on him by sections 22, 24, 25, 27, 29, 30, 32, 33, 34, 37, 39, 40, 42, 44, 45, 46, 50, 57, 61, 62, 63, 64, 66, 70, 87, 91, 92, 112 and 113 to any person, any group of public servants or any body he designates.

1987, c. 80, s. 82; 1994, c. 13, s. 15; 1997, c. 64, s. 14.

Interest.

115. Interest shall be charged on any unpaid balance of fees payable under this Act at the rate determined under section 28 of the Act respecting the Ministère du Revenu (chapter M-31). The interest is capitalized monthly.

1987, c. 80, s. 83; 1997, c. 64, s. 14.

Minister responsible.

116. The Minister of Natural Resources, Wildlife and Parks is responsible for the administration of this Act.

1997, c. 64, s. 14; 2003, c. 8, s. 6.

REPEAL SCHEDULE

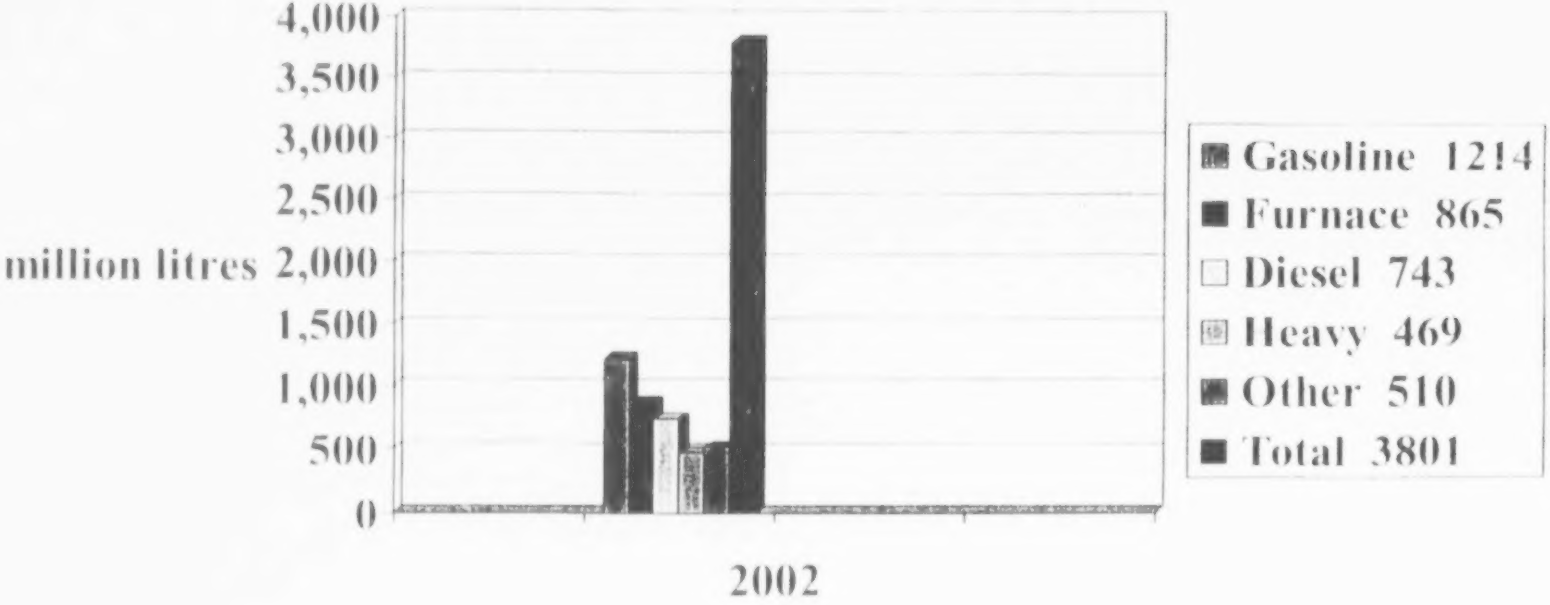
In accordance with section 9 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), chapter U-1.1 of the Revised Statutes, in force on 1 April 1999, is repealed effective from the coming into force of chapter P-29.1 of the Revised Statutes.

APPENDIX H

Petroleum Product Sales – NS

Submitted by Service Nova Scotia and Municipal Relations

Petroleum Product Sales – NS



Select Committee on Petroleum Product Pricing

Report from
Danny Graham, MLA
Halifax Citadel

House of Assembly
Nova Scotia

August 31, 2004

Mr. Roderick MacArthur
Chief Clerk of the House
House of Assembly
Province House
Halifax, Nova Scotia

Dear Mr. MacArthur:

In accordance with Resolution 1676, passed by the House of Assembly on May 13, 2004, I am pleased to submit this minority report for the consideration of the Legislative Assembly of Nova Scotia.

Respectfully Submitted,

Danny Graham

Danny Graham, MLA
Halifax Citadel
Member Select Committee on Petroleum Product Pricing

Halifax, Nova Scotia
August 2004

Select Committee on Petroleum Product Pricing
Report from Danny Graham, MLA - Halifax Citadel – Sept. 1, 2004

Executive Summary

I would like to first thank the many people who made the effort to prepare submissions to the committee. In addition, thanks to committee staff and caucus staff for their hard work and support.

I want also to express my appreciation to Chair Bill Dooks and my fellow committee members for their cooperation over these past two months. Although we have reached different conclusions about the best course of action, we have done so in a cordial atmosphere of respect that appears to be common to committee work, but all too uncommon in our work in the legislature.

It is always preferable to reach a unanimous consensus on issues such as these. My view of what we heard and read about these issues, however, leaves me far apart from other members, and I am therefore filing this minority report.

I am aware that two members of the liberal caucus, Mr. MacKinnon and Mr. Sampson have signed the majority report. This is not troubling since the committee work was not a partisan exercise. This amounts to a genuine difference of opinion. Undoubtedly it will make for lively caucus debate once it comes time for our full caucus to further consider these issues.

My hope is that the focus will be on the substance of our differences and less on the fact that there was disagreement. What matters is what the government chooses to do with these recommendations, and what benefit Nova Scotians ultimately receive from its action.

This committee was struck principally because of concern by Nova Scotians about the high price of gasoline in the spring of this year. Although issues such as the price of home heating fuel were to be considered, at the core of our mandate, we were to examine the issues around high gasoline prices and recommend possible approaches to lowering them.

The evidence before the committee strongly suggests that gasoline prices will *rise* if the recommendations of the majority report are implemented. In fact an examination of the majority report would show that the report provides essentially *little back-up support for its assertions that the changes recommended will lead to lower prices*. This could have been done by reference to the experiences in other jurisdictions that have tried divorcement or these regulatory approaches.

The majority is relying almost entirely on the *theory* of how these regulated approaches could work. When one examines the studies concerning the *practical experience* in jurisdictions where they have been tried, however, it is clear that these approaches have lead to *higher* gasoline prices.

The core *recommendations of the majority* regarding gasoline prices are as follows:

- Immediate retail divorcement,
- Immediate "below-cost" price regulation,
- Immediate "one-rack-price" regulation; and

- If retail divorcement is delayed or proves unworkable, move to a "PEI Plus" model of full regulation.

When one considers the combined effect of simultaneously implementing retail divorcement, below-cost legislation and one-rack-price regulation, Nova Scotia would be immediately and dramatically shifting to become the most regulated market in North America. The fourth (PEI Plus) approach would be even more radically interventionist, but it would only come into effect id retail divorcement is delayed or proves to be unworkable.

I have no difficulty with strong and even radical approaches being implemented down the road, but only if there is a reasonable possibility that they will help consumers. This can only be determined through a more detailed analysis of the possible benefits and drawbacks experienced by other jurisdictions. It is important that we properly build our case. In this summer exercise, we have barely scratched the surface of the ramifications of what is being proposed by the majority.

At the first committee meeting on June 30, 2004, (on page 8 of Hansard) I expressed my concern that if we are looking to prepare a substantive original report, the August 31 deadline was unrealistic. However, if we were looking to make general comments to the legislature and give Nova Scotians an opportunity to say their piece, this was a doable exercise.

If the province moves forward with strong regulatory action without considering the full ramifications of its choices, it will probably make matters worse – *through higher gasoline prices* – the very issue the committee was struck to address; or *through the closing of service stations* – the issue that was front and center with retail witnesses.

As I discuss later, the most reliable information we have concerning the actual experience with *retail divorcement* is that it *increases gasoline prices*. The majority has provided only the theoretical position that it could reduce prices, with no indication of where or how this theory has worked. I have additional concerns about whether it will lead to fewer gasoline stations.

The most reliable information we have about *below-cost pricing* (e.g. preventing stronger retailers from selling below refiner prices) is that it *increases gasoline prices*. Again, the majority has not pointed to any jurisdiction where it has lead to lower gasoline prices.

With respect to selling at *one-rack-price*, we know of no other jurisdiction that has tried this, so Nova Scotia would be charting new water. This is a form of partial regulation. Mike Duda, a Senior Policy Analyst with Service Nova Scotia advised us "partial (regulation) will create all sorts of problems that we don't understand". Mr. Duda, along with federal government officials have also warned that regulation inherently results in *higher costs*.

With respect to a PEI Plus model that is possible if retail divorcement stalls or fails, there was extensive discussion about the PEI part of the model, but very little regarding the "Plus" part. Dealing first with the PEI part: excluding tax, it is clear from a review of the reliable data that "islanders" pay *more* for gasoline under their regulated system, even taking into consideration transportation costs (when taxes are added they pay less, but this is irrelevant to the discussion of regulation).[1]

The feature of the "Plus" part of PEI Plus that concerns me most relates to the recommendation in the majority report concerning "fairness for the consumer and reasonable rate of return be guiding factors when the UARB sets the price…". While the language sounds innocuous, I understand it to mean that the UARB may set the Nova Scotia price, irrespective of what the world price of crude might be or what the refiners asking price might be because the UARB, through an inquiry, may determine that the crude price is unreasonably high or the refiner price is unreasonably high.

I share the concerns of the majority about whether some oil companies have been oppressive in their business dealings with retailers. And I am also skeptical about their claims of being reasonable in their role concerning setting fair crude and refiner prices. But there are concrete steps, short of the PEI Plus approach, that should be taken if we stand any chance of "wagging the dog" that is "big oil". We need to build our case carefully and develop government and industry allies around this daunting question. As expedient as it might be to suggest the Nova Scotia government can fix the problem of high fuel prices, this small province represents less than 1/1000 of the world market.

I make four recommendations to address my concerns about larger oil company dominance:

- File complaints with the federal Competition Bureau on behalf of retailers,
- Encourage the federal government to lower the standard of proof for prosecutions under the Competition Act,
- Give the Competition Bureau or a provincial arm of government the authority and resources to thoroughly investigate the activity of large oil companies in setting the crude and refiner prices, and
- Enlist other jurisdictions to join in this exercise and become allies.

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[1] MJ Ervin & Associates, 1997 Canadian Retail Markets Study, page 79. In addition, see chart Appendix C.

Provincial taxes on gasoline are much higher than the national average (see chart comparison Appendix A). In addition, as a result of increased Nova Scotia taxes (Budget 02/03) and increased pump prices, at the current rate, the provincial government is receiving approximately $40 million more in gasoline taxes per year than it received two and a half years ago (based on provincial consumption of 1.2 billion liters per year). Accordingly, I recommend that government should:

- Explore ways of reducing fuel taxes,
- Explore using part of the tax windfall that comes from higher pump prices to support the continuation of a supply of gasoline to remote locations, and
- Support environmentally friendly alternatives to heavy petroleum product consumption.

With respect to the all-important environmental issues, while I was disappointed with the number of presentations we received, the recommendations of the majority are sound and very supportable.

The presentations before the committee have been valuable in establishing the challenges being faced by consumers, retailers and others in the industry. They form the foundation for the provincial government to take a more active role in addressing the concerns of Nova Scotians who want answers to the high price of fuel. I specifically set out steps that can be taken now to address some of these challenges.

As tempting as it might be to try to reduce these issues into strong messages and bold action, more work needs to be done before we can put our best foot forward on the broader range of complex issues.

I hope my comments and recommendations can be of assistance.

Retail Divorcement

Retail Divorcement is the top recommendation of the majority report and is described in the majority report. It essentially involves forcing large integrated oil companies to reduce the degree of their industry integration by selling off corporately-owned service stations. In theory, removing integrated oil companies from the retail market would increase competition and reduce consumer prices. In practice, however, this approach appears to *increase gasoline prices*.

First, I would like to address the question of whether there has been enough information, before the whole committee to make a recommendation that retail divorcement is the best option. The committee is recommending that *after* divorcement has been tried, we should determine its effects and possibly move to more substantial regulation if it does not work out. This is strikingly like a "*shoot first, ask questions later approach*".

It would be far more prudent to study the record in jurisdictions that have tried divorcement *before* making this sweeping recommendation. We could have learned about divorcement experiences through oral submissions, written submissions, an independent examination of other jurisdictions, or by a literature review of the studies that have examined the subject in detail. The committee simply has not undertaken this level of analysis.

While the issue of retail divorcement was raised in committee hearings, two presenters came prepared to submit on this subject. One presenter was a Nova Scotia gasoline retailer who had no supporting documentation to show that divorcement was a desirable approach. The other presenter was Richard Taylor, the Acting Deputy Commissioner of the Federal Competition Bureau. Mr. Taylor cited a Federal Trade Commission report that concluded that in the US states where they have divorcement laws, "consumers paid 2.7 cents per gallon more" (Hansard, July 27, 2004, page 44). [2]

In an attempt to understand the ramifications of divorcement better, I have reviewed a study for the state of Hawaii, which examined the impact of divorcement in the 6 US states that have divorcement legislation[3]. The Hawaii study also provides a summary of studies done on divorcement. From this study and a review of the report summaries, there is a clear consensus (although not unanimous) that divorcement legislation increases gasoline prices.

These studies also raised concerns about divorcement leading to shorter service station hours, reduced services and fewer stations.

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[2] Also see Vita, Michael G., *Regulatory Restrictions on Vertical Integration and Control; The Competetive Impact of Gasoline Divorcement Policies*, Federal Trade Commission, July, 21, 1999.

[3] Regulating Hawaii's Petroleum Industry, Chapter 15, Retail Divorcement.

It seems clear that divorcement will help some retailers who have strenuously argued that large companies are oppressing them. It also would likely help wholesalers like Wilsons. But ultimately would divorcement hurt consumers? In theory retail divorcement sounds attractive, but ultimately – *in practice* - it has been more harmful to consumers.

I am not ideologically opposed to retail divorcement. At a minimum, however, it is imprudent to recommend that divorcement be implemented without a clear sense of its potential benefits and drawbacks. Currently, much more analysis is required. I recommend that the benefits and drawbacks of retail divorcement be further explored.

A broader analysis of industry options including retail divorcement, below-cost sales legislation, one rack pricing, refiner margins, and the price of crude, is recommended. This analysis, which was not possible in the short duration of the committee hearings, could be done by government or by a committee with substantial resources and a longer timeframe.

Other Options that Protect Retailers

The committee received testimony from many retailers who gave evidence of hard-ball business activity, where large suppliers are taking advantage of their strong negotiating position. In more troubling cases the evidence appeared to go beyond hard-ball business activity and verged on predatory price squeezing. *There should be a general complaint filed by the committee and/or government concerning the actions of suppliers to retailers by the federal Competition Bureau, under the provisions of the Competition Act.*

Rodney Grace, a co-owner of Bob's Shell service station in Bridgewater gave specific evidence to the committee that if he raises the price at the pumps, his oil company will increase their cost to him, in effect, squeezing his profit margin (Hansard, July 15, 2004, page 15). This practice was confirmed by the Richard Cormier, owner of H. Cormier Service Station in Cheticamp (Hansard, July 19, 2004, page 21). *There should be a complaint filed to the Competition Bureau regarding the specific allegations of price squeezing by the suppliers of fuel to the stations operated by Mr. Grace and Mr. Cormier.*

The standard of proof under the Competition Act is the criminal standard of proof beyond a reasonable doubt. Despite the frequency of anecdotal stories about the unfair actions of large oil companies, there have been few convictions under the Act. The criminal standard of proof beyond a reasonable doubt makes little sense and is too high. *The province should urge the Government of Canada to change the standard of proof to "clear and convincing evidence" which falls between the civil standard of balance of probabilities and the criminal standard of proof beyond a reasonable doubt.*

I support the majority recommendation that the Federal Government reinstate the Competition Bureau's power to conduct a research inquiry.

Regulation

Below-cost regulation

The committee is recommending partial "regulation" with a below-cost legislation mechanism, similar to Quebec. Below-cost legislation prohibits deep-pocket gasoline retailers from selling at prices that are below rack cost. It is intended to prevent larger retailers from driving smaller retailers out of business.

Again, little evidence was presented to the committee and more study is needed before we introduce this partial regulation since it may increase prices. Richard Taylor, of the federal Competition Bureau submitted that in US States with below cost-sales legislation, *retail gasoline prices are higher*. No evidence or testimony was put before the committee that showed how below-cost legislation lead to lower prices.

The committee attempted to have a Quebec official appear and explain the pros and cons of this approach, but this was not possible. Perhaps with more notice, outside the summer period, more could be learned about the Quebec experience before we recommend this approach.

Single-rack -price

The committee also wants to regulate a single rack price at the refinery gate. The committee knows of no other jurisdiction that has tried this novel approach. The possible impact is unknown. Again, there were virtually no submissions prepared on this point, and it was raised as a passing consideration.

The committee did hear strong concerns by federal and provincial officials that regulation increases costs. In this approach, it is easy to imagine how market inefficiencies could lead to higher prices for consumers.

In addition, this is a form of partial regulation and Mike Duda from Service Nova Scotia and Municipal Relations stated "My suggestion – from looking at this over time - would be that if the committee does choose to recommend regulation that it go to the full regulation route. Partial will create all sorts of problems that we don't understand."(Hansard, July 27, 2004, page 9)

PEI Plus (full regulation)

The committee is recommending that if retail divorcement does not work or is delayed, the government should go beyond the *initial regulatory process* it proposes to implement a *full regulatory process* that is like PEI, but which goes further to involve the UARB and factors in possible unfairness in the world price of crude and refinery costs.

There was indeed extensive discussion and analysis about whether to take the PEI approach, but relatively little analysis about whether and how the "Plus"enhancements would work. It is important to note that when the majority speaks of referring the matter to the UARB to examine the broader question of "fairness for the consumers and reasonable rates of return to producers", what it appears to be contemplating is exploring whether we can reduce the pump price irrespective of the price of the world price of crude and the margins enjoyed by refiners.

The price of crude oil has increased dramatically in relation to the costs of exploration and extraction. As well, the costs of refining crude oil have risen dramatically. These are significant concerns, but no significant evidence was presented, or analysis undertaken, by the committee regarding these two issues. Before a recommendation is made that addresses the price of crude oil or refining prices, a fully-funded investigation into crude prices and refiner margins that considers all possible solutions is necessary. This investigation could be undertaken in conjunction with other provinces also wanting to address the fuel price issue.

As mentioned, I share the concerns that the majority members have about the strength and profitability of large multi-national oil companies. *The Federal Competition Bureau or a provincial arm of government should be given the authority and resources to thoroughly investigate the activity of large oil companies in setting the crude and refiner prices.* But I am not prepared to recommend implementing an inevitable process that may lead to negative unknown consequences for Nova Scotia consumers.

What is being proposed with PEI Plus does not appear to have been tried by any other jurisdiction. With Nova Scotia representing less than 1/1000 of the market to which "big oil" supplies, we are not exactly starting from a position of strength. It would be an overstatement to suggest we are the proverbial tail trying to wag the dog. At best, we are a clump of hair on the tail of the dog.

The prudent course is to build our case through a more comprehensive analysis. Assuming that supportive evidence is discovered, the next step would be to develop allies in other jurisdictions and industry to bring pressure on these companies and other industry players to ensure that fairness for consumers may be achieved.

In all of this, we should not lose sight of the fact that the pre-tax price of gasoline is low in Canada, compared with other western countries (see chart Appendix B). In addition, the pre-tax price in Halifax is usually about the same as the national average (see chart Appendix A).

Moreover, according to an independent data collection agency "…since deregulating pump prices, the Halifax market, and likely others in Nova Scotia, has seen a *decline* in pump prices relative to other Canadian markets."[4]

There is no supporting evidence in the majority report for the price of gasoline rising since deregulation or as a result of deregulation.

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[4] Supra fn. 1 (emphasis mine)

Since 1992 – the first full year of regulation - when one compares the pre-tax price of gasoline in Halifax with the price of gasoline in Charlottetown, the price in Charlottetown is 2.65 cents higher (see chart Appendix C). According to the largest wholesaler to PEI, 1 cent of this can be explained by transportation costs to Charlottetown (see letter Appendix D). Accordingly, Halifax still enjoys an advantage of approximately one and half cents per liter. On 1.2 billion liters, that translates into $18 million dollars worth of savings to Nova Scotians. (To the extent that it could be argued that Halifax was not representative of Nova Scotia and Charlottetown of PEI, we heard evidence that *each* capitol city has lower prices than the rural average.)

On a straight comparison with PEI (no Plus), the trade-off becomes clearer. Is the stability of pricing for 15 days (the minimum timeframe for prices to remain constant in PEI) worth the one and a half cents per liter, or $18 million in savings? As with anything, there are other potential variables, but I submit this is as close as we can get to quantifying the straight trade-off between the current Nova Scotia approach and the current PEI approach.

A healthy debate is welcome in this regard. Perhaps Nova Scotians would be happy with the trade-off. Indeed, I find some features of regulation attractive. The most compelling is possible consumer peace. Prince Edward Islanders appeared to be less upset about the spring pump increases than Nova Scotians, but this could be explained by their lower pump price, because of lower provincial taxes.

Remote locations

The committee heard evidence that the number of service stations has been declining in Nova Scotia, particularly in rural Nova Scotia – and this trend could continue. The most troubling aspect of this relates to whether coastal communities like Canso and places along the Cabot Trail would continue to have service stations.

For example, XTR Energy, currently provides fuel to remote areas that might otherwise not have a service station and has locations in:

- Economy
- Merigomish
- St. Peters
- River Hebert
- Rawdon Gold Mines
- Cape North
- Neil's Harbour
- Half Island Cove
- North Brookfield
- Shubenacadie
- Margaree
- Springhill
- Hopewell

- Liverpool
- Scotsburn
- Salmon River
- Inverness (Fuel Stop)
- Wreck Cove (Fuel Stop)
- Havre Boucher (Fuel Stop)

On July 20, 2004, Ken Wootten, the owner of XTR Energy, appeared before the committee in Truro. Mr. Wootten indicated that if the PEI regulatory system is put in place in Nova Scotia, he would be out of business. To be fair, the majority is not proposing every feature of the PEI model, but the concerns underpinning Mr. Wooten's concerns continue. Accordingly, service to these remote communities may be in jeopardy under any approach like PEI.

Remote gasoline stations provide an important lifeline to remote communities throughout Nova Scotia. All members of the committee are sympathetic to the challenges of gasoline stations in these communities staying open. I do believe that government has a role in ensuring the continuation of supply of what is virtually a necessity to these remote communities. *I recommend that some means of supporting "remote locations" should be explored by the government.*

Taxes

When a comparison is made between industry costs of gasoline in Nova Scotia as compared with the Canadian average, Nova Scotia is more heavily taxed (See chart Appendix A). On an annualized basis, the provincial government is receiving approximately $40 million more in gas taxes than it did two and a half years ago as a result of the increase on gasoline taxes of 2 ¢/liter in April 2002 and the increasing HST revenues as a result of the higher price of gasoline. For every ten cent per liter increase in the price of gasoline, the Province makes $9.8 million. *I recommend that government explore ways of reducing fuel taxes, and support environmentally friendly alternatives to heavy petroleum product consumption.*

Environment

An important consideration is our dependency on fossil fuels. This is a local and a worldwide problem. Many of our concerns regarding the price of fuel are directly related to need for fuel. *While I was disappointed with the number of presentations we received, the recommendations of the majority are sound and very supportable.*

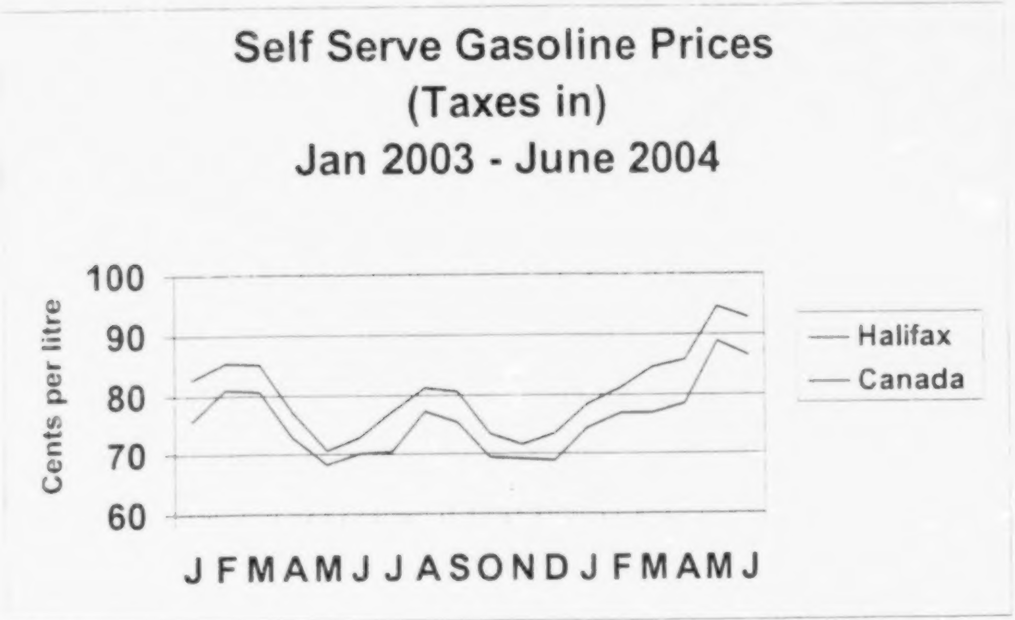
Summary

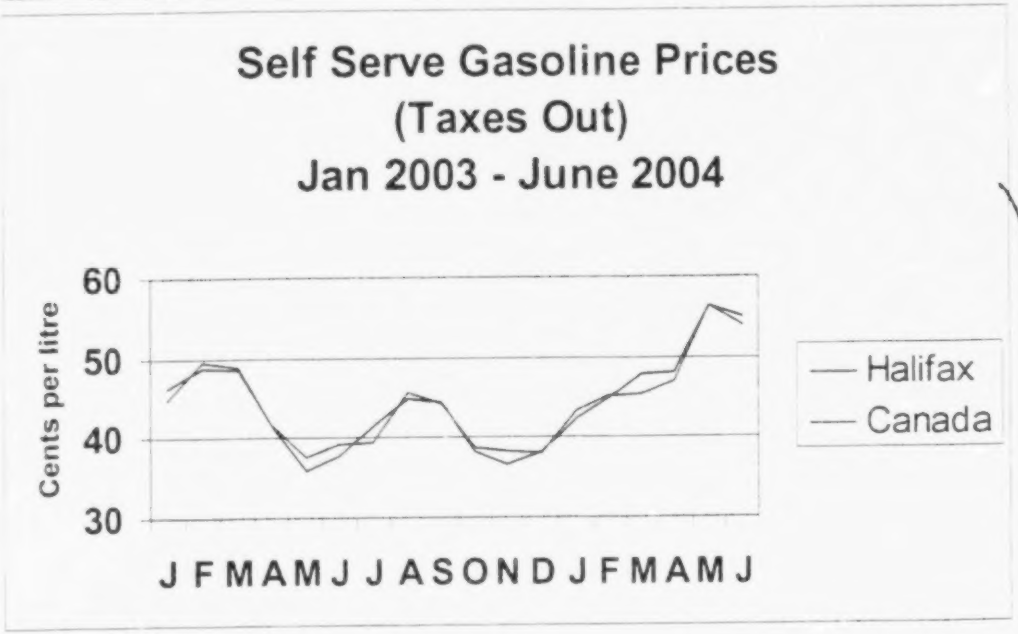
It is not necessary for the committee to set a concrete framework for a new regime. The committee has valuable, but still limited information. The evidence supporting regulation is largely anecdotal. The committee's role is to act for the public good and the public's interest. The best evidence before the committee suggests that the majority recommendations of retail divorcement and regulation, in its various suggested forms, will cost consumers millions and lead to unknown and unintended consequences. Retail divorcement and regulation could also lead to the closure of service stations – perhaps in more remote communities. That being said, it important to further pursue these issues.

The primary mandate of the committee was to explore the high price of fuel and make recommendations. I believe that before any legislative change can be recommended, we need to be fully informed of possible benefits or drawbacks for Nova Scotians.

After hearing from the presenters and researching these issues, I do not believe that the committee is in a position to know the full effects of a major legislative change, but it does now have grounds to take action to address short-term concerns and begin to better address long-term challenges.

Appendices

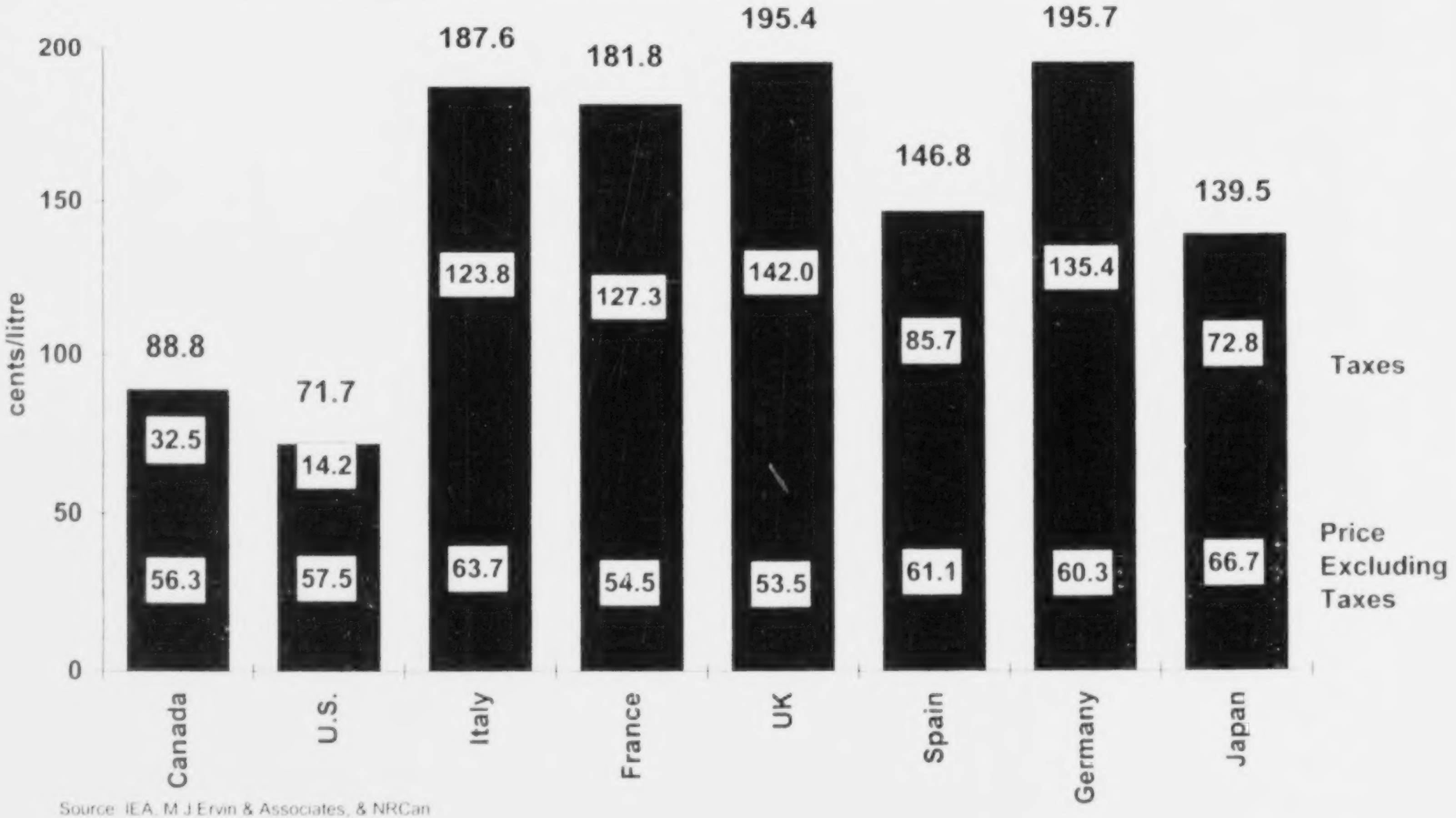




Sources: Nova Scotia Data – Department of Energy Surveys
National Data – MJ Ervin & Associates Inc. Surveys

Contact person: Bob Newcomb
Economist, Policy and Analysis Division
Department of Energy
Phone: 424-1709 Fax: 424-0528
Email: newcombb@gov.ns.ca

International Retail Gasoline Prices
May 2004
(Can cents/litre)



Source IEA, M J Ervin & Associates, & NRCan

Appendix B

Appendix C

GASOLINE PRICE COMPONENTS 1991 - 2004 (cents per litre)

HALIFAX (Average)	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004 June	Average 2000 - 04	
Crude Cost	14.7	14.8	14.0	13.7	15.2	18.4	17.6	12.7	17.2	27.9	24.6	25.2	27.3	30.4	27.1	
Refiner Margin	11.1	7.5	6.9	6.8	7.1	5.5	6.6	6.0	6.2	8.3	8.2	7.0	8.5	12.4	8.9	
Marketing Margin	11.3	11.5	6.9	6.4	5.2	3.8	6.0	7.4	6.2	6.6	7.0	6.6	6.2	6.4	6.6	
Total Ex Tax Price	**37.1**	**33.8**	**27.8**	**27.0**	**27.5**	**27.6**	**30.1**	**26.1**	**29.6**	**42.8**	**39.8**	**38.8**	**41.9**	**49.2**	**42.5**	
Taxes	25.5	24.8	23.5	25.0	26.8	27.1	30.4	30.9	31.5	33.4	33.0	34.6	35.6	36.7	34.7	
Total Price	**62.6**	**58.6**	**51.3**	**52.0**	**54.3**	**54.7**	**60.5**	**57.0**	**61.1**	**76.2**	**72.8**	**73.4**	**77.5**	**85.8**	**77.1**	
CHARLOTTETOWN (Average)	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004 June**	**Average 2000 - 04**	
Crude Cost	14.7	14.8	14.0	13.7	15.2	18.4	17.6	12.7	17.2	27.9	24.6	25.2	27.3	30.4	27.1	
Refiner Margin	11.1	7.5	6.9	6.8	7.1	5.5	6.6	6.0	6.2	8.3	8.2	7.0	8.5	12.4	8.9	
Marketing Margin	12.6	14.1	12.1	10.7	11.2	9.3	10.5	8.5	3.3	6.5	11.7	7.7	9.1	6.7	8.3	
Total Ex Tax Price	**38.4**	**36.4**	**33.1**	**31.2**	**33.5**	**33.2**	**34.6**	**27.2**	**26.7**	**42.7**	**44.5**	**40.0**	**44.9**	**49.5**	**44.3**	
Taxes	24.9	24.1	23.4	23.7	25.7	25.9	26.0	26.3	26.5	27.2	27.8	28.2	28.8	30.8	28.6	
TAX DIFFERENCE WITH CHARLOTTETOWN *	**0.6***	**0.7***	**0.1***	**1.3***	**1.1***	**1.2***	**4.4***	**4.6***	**5.0***	**6.2***	**5.2***	**6.4***	**6.8***	**5.9***		
Total Price	**63.4**	**60.6**	**56.5**	**54.9**	**59.2**	**59.1**	**60.6**	**53.5**	**53.2**	**69.9**	**72.3**	**68.2**	**73.7**	**80.2**	**72.9**	
HALIFAX VERSUS CHARLOTTETOWN EX TAX	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**June 2004**	**Ave. 2000 - 04**	**Ave. 1992 - 04***
( ) indicate Halifax prices below the Charlottetown avg.	**(1.3)**	**(2.6)**	**(5.3)**	**(4.2)**	**(6.0)**	**(5.6)**	**(3.5)**	**(1.1)**	**2.9**	**0.1**	**(4.7)**	**(1.2)**	**(3.0)**	**(0.3)**	**(1.8)**	**(2.65)***
CANADA (10 City Average)	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004 June**	**Average 2000 - 04**	
Crude Cost	14.7	14.8	14.0	13.7	15.2	18.4	17.6	12.7	17.2	27.9	24.6	25.2	27.3	30.4	27.1	
Refiner Margin	10.9	7.4	7.5	6.9	6.7	5.9	7.2	6.7	6.6	8.5	9.7	8.9	10.4	13.9	10.3	
Marketing Margin	7.0	6.4	6.0	5.4	4.5	3.9	4.3	4.4	4.7	4.8	4.4	4.5	4.4	4.2	4.5	
Total Ex Tax Price	**32.6**	**28.6**	**27.5**	**26.0**	**26.4**	**28.2**	**29.1**	**23.8**	**28.5**	**41.2**	**38.8**	**38.6**	**42.1**	**48.5**	**41.8**	
Taxes	24.7	25.9	26.1	26.2	27.8	28.6	28.9	28.6	29.1	30.2	30.0	30.2	31.1	31.8	30.7	
Total Price	**57.4**	**54.5**	**53.6**	**52.3**	**54.1**	**56.8**	**58.0**	**52.4**	**57.6**	**71.4**	**68.8**	**68.8**	**73.2**	**80.3**	**72.5**	
HALIFAX VERSUS CANADA EX TAX	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**June 2004**	**Average 2000 - 04**	
( ) indicate Halifax prices below the Canada average	**4.5**	**5.2**	**0.3**	**1.0**	**1.1**	**(0.6)**	**1.0**	**2.3**	**1.1**	**1.6**	**1.0**	**0.2**	**(0.2)**	**0.7**	**0.7**	
HALIFAX TAX DIFFERENCE WITH CANADA*	**0.8***	**(1.1)***	**(2.6)***	**(1.2)***	**(1.0)***	**(1.5)***	**1.5***	**2.3***	**2.4***	**3.2***	**3.0***	**4.4***	**4.5***	**4.9***		

WILSONS
Wilson Fuel Co. Limited
3617 Barrington Street
Halifax, NS B3K 2Y3

Appendix D

August 31, 2004

Confidential – For Select Committee use only

Mr. Danny Graham
MLA – Halifax Citadel
C/O Liberal Caucus Office
5151 George St.
Suite 1402
Halifax
B3J 2T3

Re: Difference in supply costs between Halifax and Charlottetown

Dear Mr. Graham:

As you requested, I am writing this letter to advise you of the difference in supply costs between our pick up of product in Halifax and Charlottetown. Local delivery costs to the various stations in the respective cities are very similar (within hundredths of a cent per litre) which is to be expected as tank sizes underground and size of delivery vehicles are also very similar.

Cost to pick up product ex Charlottetown – All Products:

Imperial Oil – Halifax plus 1.0 cents per litre
Irving Oil – Halifax plus 0.99 cents per litre

Although not requested – the committee may be interested to note that the acquisition cost in Sydney is exactly the same.

I hope this assists in you deliberations

Sincerely,

David Collins, VP

CC: Mr. William Dooks – MLA Eastern Shore, Chair of Select Committee on Petroleum Products Pricing

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<http://www.gov.ns.ca/legislature/COMMITTEES/petroleum_product_pricing.html>